

alfasi hire

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Date: _____

I, _____ of _____

(Print Name)

(Company Name)

hereby authorise alfasi hire to debit my Credit Card (above) for the hire of equipment and the relevant associated costs as per the following details; also agrees to comply and abide with the terms and conditions of equipment hire as set out on the ensuing pages.

Signed: _____ Date: _____

Card Type: Visa Master card American Express

Name on the Card: _____

Drivers Licence Number of Card holder _____

This authority covers the full length of any hire I/we have or will have with Alfasi hire and the associated costs including but not limited to hire charges, transportation, fuel, damages etc.

This authority only expires when a credit account has been approved and authorized by alfasi hire.

Do your operator(s) hold the relevant licensing Yes No (please circle)
(Licensing can be organised if required by alfasi hire)

Please tick licences held

Yellow Card WP Forklift CN Gold Card Other _____

When Yellow card is ticked please tick the component(s) completed: SL BL VL TL

Company Details

Company Name _____

Trading Name _____

ABN _____ ACN _____

Physical Address _____

Postal Address _____

Ph. No. _____ Email: _____

Fax No. _____ Mobile No. _____

PART G - DECLARATION - Personal Property Security Act

I/We declare that the goods to be hired by me/us from the lessor are to be hired wholly or predominantly for business purposes.

IMPORTANT

You should only sign this declaration if the goods are hired wholly or predominantly for business purposes. By signing this declaration you may lose your protection under the National Credit Code.

SIGNED BY..... in the presence of:)
(please print))

.....
Signature of:

.....
Signature of Witness:

Name of Witness
(Please print)

TERMS AND CONDITIONS OF EQUIPMENT HIRE

These Terms and Conditions apply to all Equipment hired by Alfasi to the Customer.
Please read these Terms and Conditions (below) carefully and sign where indicated above.

1. Definitions

In the Terms and Conditions, unless expressed or implied to the contrary, the following words have the following meanings:

- Alfasi** means Alfasi Hire, a division of Alfasi Equipment Hire Pty Ltd.
- Commencement Date** means the date set out in the Schedule.
- Customer** means the entity hiring the Equipment the subject of these Terms and Conditions, being the applicant in Part A of this document.
- Damage Waiver** means the waiver provided by Alfasi to the Customer in accordance with clause 13.
- Damage Waiver Amount** means the amount payable for the Damage Waiver as set out in the Schedule.
- Equipment** means the equipment set out in the Schedule.
- Expiration Date** means the date set out in the Schedule.
- Hire Fee** means the hire fee specified in the Schedule, or such other amount specified by Alfasi from time to time.
- Hire Period** means the period from the Commencement Date to the Expiration Date (both dates inclusive) as specified in the Schedule, unless otherwise terminated in accordance with these Terms and Conditions.
- Location** means the address where the Equipment is delivered as set out in the Schedule.
- Parts** means any and all appliances, parts, instruments, appurtenances, accessories and other equipment (including without limitation tyres) of whatever nature constituting part of the Equipment or which may from time to time be incorporated or installed in, or attached to the Equipment.
- PPSA** means the Personal Property Securities Act 2009 (Cth).
- PPSR** means the Personal Property Securities Register established pursuant to the PPSA.
- Terms and Conditions** means these terms and conditions of equipment hire.
- Schedule** means the schedule to the Equipment hire quotation issued by Alfasi and accepted by the Customer or, failing that, any correspondence from Alfasi to the Customer.
- Security Interest** means an interest in personal property provided for by a transaction that, in substance, secures payment of money or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property), and also includes a transaction which the PPSA treats as a security interest whether or not the transaction concerned, in substance, secures payment or performance of an obligation.
- Secured Property** means all goods that are supplied to the Customer by Alfasi (whether now or in the future) including the Equipment and for the avoidance of doubt the proceeds of any sale of those goods.
- Sub-hirer** means any party to whom the Customer has sub-hired or otherwise provided the Equipment.

In these Terms and Conditions, unless expressed or implied to the contrary, terms defined in the PPSA, have the same meaning.

2. Hire of Equipment

Alfasi will hire to the Customer and the Customer will take on hire from Alfasi the Equipment on the terms of these Terms and Conditions.

3. Supply and Return of Equipment

- 3.1 On and from the Commencement Date, Alfasi will give and the Customer will take possession of the Equipment.
- 3.2 The Customer must return the Equipment to Alfasi, by 5pm AEST on the Expiration Date.
- 3.3 Except as otherwise provided in the Schedule, the Customer must make any arrangements necessary to enable it to obtain delivery of the Equipment and return the Equipment, including arranging all necessary labour and other equipment needed to facilitate delivery and return of the Equipment. Alfasi will not be liable for any delay in delivery or for any damage incurred to the Equipment in the course of delivery or return of the Equipment.
- 3.4 Delivery of the Equipment to the Location and return of the Equipment to Alfasi is at the Customer's own expense; this includes all transportation expenses, the supply of additional labour and any other expenses incurred by the Customer to transport the Equipment.

4. Acceptance of Equipment and Risk

- 4.1 The Customer acknowledges that the Customer has inspected the Equipment or had sufficient opportunity to inspect the Equipment. Accordingly, the Customer is satisfied as to the condition, quality, safety and (where applicable) roadworthiness of the Equipment, its fitness for the Customer's purposes and its compliance with its description. The Customer acknowledges that on taking delivery of the Equipment, it will be taken to have accepted the Equipment on an "as is" basis.
- 4.2 The Customer will be deemed to have accepted the Equipment:
 - 4.2.1 where Alfasi delivers the Equipment, upon delivery of the Equipment to the Location;
 - 4.2.2 where the Customer arranges delivery of the Equipment from Alfasi's premises, upon the Customer or its agent taking possession of the Equipment, and risk passes to the Customer at this point.

5. Installation and Location of Equipment

- 5.1 The Customer must not attach the Equipment to any property without Alfasi's prior written consent. If the Equipment is attached to land, the Equipment will not become a fixture and may be removed by Alfasi in accordance with these Terms and Conditions.
- 5.2 The Customer must not remove with Equipment from the Location or part with possession of the Equipment without Alfasi's prior written consent.

6. Ownership of Equipment

- 6.1 Alfasi retains full title to the Equipment, notwithstanding:
 - 6.1.1 the delivery of the Equipment to the Customer;
 - 6.1.2 the possession and use of the Equipment by the Customer; and
 - 6.1.3 any temporary attachment of the Equipment to any land or buildings to facilitate use of the Equipment.
- 6.2 Nothing in these Terms and Conditions provides the Customer with any title to or interest in the Equipment. The Customer is a mere bailee of the Equipment, with a right only to use the Equipment in accordance with, and pursuant to, these Terms and Conditions.
- 6.3 The Customer must not, and must not attempt to, sell or offer for sale, assign, mortgage, pledge, charge, encumber, or otherwise dispose of the Equipment or any part thereof.
- 6.4 The Customer may lend, lease, hire or part with possession of the Equipment provided that it only does so in accordance with these Terms and Conditions including obtaining Alfasi's prior written consent.
- 6.5 The Customer acknowledges that no representation express or implied, written or oral has been made by or on behalf of Alfasi to the Customer that the Equipment may be purchased from Alfasi by the Customer or any related body corporate or any nominee of the Customer at any time.
- 6.6 The Customer acknowledges and agrees:
 - 6.6.1 Alfasi may charge or mortgage (**Security**) its interest in the Equipment in favour of a third party (**Security Holder**) without the Customer's consent. The exercise of any rights by the Security Holder under a Security will not constitute a breach or default under these Terms and Conditions or otherwise entitle the Customer to terminate, rescind or revoke these Terms and Conditions; and
 - 6.6.2 the Customer's rights in respect of the Equipment are expressly subject and subordinate to the rights of the Security Holder (whether arising under the Security, at law or otherwise). Nothing in these Terms and Conditions will in any way limit, reduce, vary or otherwise qualify the rights of a Security Holder under or in connection with any Security, any other document connected with any Security and the Security Holder will be entitled to exercise all of its rights under or in respect of the Security to the same extent as if these Terms and Conditions had not been entered into.
- 6.7 If a Security becomes enforceable:
 - 6.7.1 Alfasi may by notice to the Customer terminate these Terms and Conditions and upon such notice the Customer's right to possess and use the Equipment automatically ceases and the Customer must surrender possession and control of the Equipment to the Security Holder or Alfasi, notwithstanding that the Customer may not be in breach or default of its obligations under these Terms and Conditions; and
 - 6.7.2 the Security Holder may enter any premises where the Equipment is located to exercise any rights of Alfasi or the Security Holder under any Security, these Terms and Conditions or at law including, if the need arises, the right to remove the Equipment from the Location. The Customer agrees to obtain all necessary consents from the owner, occupier and other interested persons (such as any mortgagee) of the relevant premises where the Equipment is located to enable the Security Holder and Alfasi to exercise the rights under this clause.

7. Use of Equipment

- 7.1 **Condition of Equipment**
 - 7.1.1 The Customer must at all times keep and maintain the Equipment properly serviced, in proper working order and condition and in good and substantial repair. Alfasi will make due allowance for normal wear and tear but

the Equipment must at all times be capable of being operated fully and efficiently for the purpose, and to the capacity, for which the Equipment is intended.

- 7.1.2 Unless otherwise agreed with Alfasi, where the Equipment consists of cranes, the Customer must at its cost service the Equipment in accordance with the instructions, recommendations and specifications of the manufacturer and in accordance with Australian Standards. The service of the cranes must be conducted by Alfasi approved service providers.
- 7.1.3 Subject to normal wear and tear, if the Equipment is not returned to Alfasi in a proper working order and condition and in good and substantial repair, the Customer will be charged Alfasi's costs in bringing the Equipment to this condition.
- 7.1.4 The Customer must clean the Equipment thoroughly before returning the Equipment to Alfasi. Alfasi may charge the Customer a cleaning surcharge to recover its costs in cleaning the Equipment if it considers that the Customer has returned the Equipment in a condition that has necessitated a greater than usual level of cleaning (based on Alfasi understanding of equipment hire industry standards).
- 7.2 **Use of Equipment**
 - 7.2.1 The Customer must operate, maintain and store the Equipment with due care and diligence and only in accordance with recognised methods and standards for Equipment of its type.
 - 7.2.2 The Equipment may only be operated by competent and (where appropriate) properly qualified, trained and licensed personnel and by appropriate methods and standards of operation. Without limiting the generality of the foregoing, the Customer must comply in all respects with the instructions and recommendations of the manufacturer or other supplier relating to the Equipment and to its use, in particular where any failure in compliance would limit the obligations of that person to Alfasi or the Customer under any statute, agreement or otherwise.
 - 7.2.3 If the Equipment includes vehicles, the Customer may only operate registered vehicles on public roads.
 - 7.2.4 The Customer can use the Equipment during a normal 56 hour week. Any additional afternoon or night shift or a longer working week such as a 7 day working week, will be charged at an additional cost. If nothing otherwise is agreed in writing between the Customer and Alfasi, an additional shift will be charged as an additional full week hire charge per week of additional shift. An additional working day or longer week will be charged pro rata using the original agreed hire rate to calculate the full hire charge.
- 7.3 **Loss or damage**
 - 7.3.1 The Customer is responsible for the safekeeping of the Equipment. The Customer must not do or cause anything to be done that may endanger the safety or condition of the Equipment and must use all reasonable measures to protect the Equipment against theft and vandalism.
 - 7.3.2 The Customer must advise Alfasi if the Equipment is lost, stolen, damages or destroyed.
 - 7.3.3 The Customer will be fully responsible to Alfasi for any loss of or damage to the Equipment, however occasioned.
- 7.4 **Replacement parts**
 - 7.4.1 The Customer must with reasonable promptness replace all Parts which may from time to time become worn out, lost, stolen, compulsorily acquired, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence. The Customer accepts full responsibility for the cost of replacing such Parts.
 - 7.4.2 All replacement Parts will be the property of Alfasi. The Customer must ensure that all replacement Parts are free and clear of all liens and rights of others, except for rights of the Customer under these Terms and Conditions. The Customer must also ensure that all replacement Parts have a value and utility at least equal to the Parts replaced, assuming such replaced Parts were in the condition and repair required to be maintained by these Terms and Conditions.
 - 7.4.3 The Customer must not, without the prior written consent of Alfasi, make any replacement, alteration or addition of any nature to the Equipment which may lead to a material reduction in the value of the Equipment.
- 7.5 **Compliance with laws and safety obligations**
 - 7.5.1 The Customer must comply in all respects with all applicable laws, regulations, requirements and rules necessary for the safe and lawful use and operation of the Equipment.
 - 7.5.2 The Customer must ensure that all safety information and operating instructions supplied with the Equipment are observed by those operating the Equipment.
 - 7.5.3 The Customer must attach to the Equipment any safety signs supplied with the Equipment so that these are clearly visible to those operating the Equipment.
 - 7.5.4 The Customer must ensure that those operating the Equipment wear suitable clothing and any protective equipment required or recommended by the manufacturer's safety and operating instructions, or as recommended by Alfasi.
 - 7.5.5 If any additional or other Part is required to be acquired, incorporated or installed in, or attached or made to, the Equipment in order to comply with applicable laws, regulations, requirements or rules, the Customer agrees to acquire, incorporate, install, attach or make such Part upon becoming aware of the requirement or upon demand by Alfasi. Any such additional or other Part will, unless otherwise agreed in writing by Alfasi, without any further act of Alfasi and the Customer or either of them, become the property of Alfasi and be considered part of the Equipment for all purposes.

7.6 Inspection of Equipment by Alfasi

7.6.1 The Customer grants Alfasi the right, and will use its best endeavours to ensure that others grant Alfasi the right, at all reasonable times upon Alfasi giving the Customer reasonable notice and without unduly interfering with the Customer's operations, to:

- 7.6.1.1 enter with its servants, agents and other representatives upon or into the Location;
- 7.6.1.2 inspect the state of repair of the Equipment;
- 7.6.1.3 carry out such tests on the Equipment as may seem necessary to Alfasi;
- 7.6.1.4 observe the use of the Equipment;
- 7.6.1.5 inspect any maintenance records in respect of the Equipment; and
- 7.6.1.6 do any act, matter or thing which may be required to be done to give proper effect to these Terms and Conditions or to protect Alfasi's rights in the Equipment.

7.6.2 In the case of an emergency, which will be determined in Alfasi's reasonable opinion, no notice is required to be given by Alfasi to the Customer and the prohibition in clause 7.6.1 on Alfasi unduly interfering with the Customer's operations will not apply.

7.7 Repair of Equipment by Customer

7.7.1 The Customer must not, without the prior written consent of Alfasi, make any alterations or additions to the Equipment.

7.7.2 For the purposes of these Terms and Conditions, Alfasi is entitled to retain such properly qualified experts as it thinks fit in order to determine whether the Equipment is in need of repair, removal or replacement or is otherwise deficient. The Customer will at all times comply with the reasonable requirements of any such expert and of Alfasi as to any repair, removal or replacement or the remedying of any deficiency.

7.7.3 Alfasi may serve on the Customer a notice in writing of any defect or deficiency in the Equipment or the Customer's operation or both (whether that defect or deficiency comes to Alfasi's attention in the course of any inspection under this clause or otherwise) requiring the Customer to undertake repairs or replacement for which the Customer is responsible under these Terms and Conditions. The notice may require the Customer to repair or replace the Equipment or make good the defect or deficiency within a reasonable time (as specified in the notice).

7.8 Alfasi may remedy

If the Customer fails to carry out the requirements under clause 7.7.3, it will be lawful but not obligatory for Alfasi or its representative to enter upon or into the Location with workmen and others for the purpose of carrying out those requirements and ensuring that the value of the Equipment is not adversely affected.

7.9 Name plates and identification of Equipment

The Customer must not without Alfasi's prior written consent, remove, change, alter or deface any name, name plate, identification number, trademark or any other identifying mark or number on the Equipment.

7.10 No dealings with Equipment

The Customer must not without Alfasi's prior written consent:

- 7.10.1 agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, let on hire, or otherwise part with, or attempt to part with the personal possession of, or otherwise deal with, the Equipment; or
- 7.10.2 conceal or alter the Equipment or make any addition to the Equipment except as required pursuant clause 7.7.3.

7.11 Breakdown of Equipment

7.11.1 In the event that the Equipment breaks down, the Customer is required to notify Alfasi immediately. The Customer must immediately stop using the broken down Equipment and must take all necessary steps to prevent injuries to any persons or damage to any property as a result of the broken down condition of the Equipment.

7.11.2 If the Customer notifies the Owner immediately of a breakdown, Alfasi may determine not to charge the Hire Fee during the time in which the Equipment is not working, unless such condition is due to the negligence or misuse on the part of the Customer. If the Equipment breaks down or is damaged due to the Customer's negligence or misuse, Alfasi will continue to charge the Hire Fee until the Equipment has been repaired or replaced at the Customer's cost.

7.11.3 In the event of a breakdown, the Customer will not repair, or attempt to repair, the Equipment without the prior written consent of Alfasi.

8. On-hire of the Equipment

8.1 The Customer may on-hire

8.1.1 Subject to clauses 5.2, 6.4 and 7.10, at any time during the Hire Period the Customer may on-hire the Equipment to a third party.

8.1.2 If the Customer is in the business of hiring equipment, any on-hire of the Equipment must be on the Customer's standard terms and conditions of hire which the Customer must provide to Alfasi upon request. If the Customer does not have standard terms and conditions of hire, then the on-hire must be on terms and conditions approved by Alfasi in writing.

8.1.3 An on-hire of the Equipment does not reduce or limit in any way the Customer's obligations to Alfasi under these Terms and Conditions.

8.2 Alfasi's rights

8.2.1 The Customer agrees and acknowledges that, if the Customer is in default of these Terms and Conditions or the Sub-hirer is in default of the terms and conditions of the sub-hire (**Sub-hire Terms**), Alfasi may exclusively exercise the rights of Customer, on behalf of the Customer, under the Sub-hire Terms.

8.2.2 The Customer indemnifies Alfasi against, and must pay to Alfasi on demand, all costs incurred by Alfasi in taking any step to enforce the Customer's rights under clause 8.2.1.

8.3 The Customer must register Security Interest

- 8.3.1 The Customer must register on the Personal Property Securities Register its Security Interest arising under every Sub-hire within 15 Business Days of the commencement of the Sub-hire.
- 8.3.2 Each Financing Statement registered under this clause 8.3 must:
 - 8.3.2.1 if the Equipment is Serial Numbered Goods under the PPSA, include the correct Serial Number of the Equipment;
 - 8.3.2.2 if the Equipment is not Serial Numbered Goods, describe the Collateral as "other goods" and, if the Financing Statement includes a description of the Collateral, that description must be accurate;
 - 8.3.2.3 denote the Security Interest as a Purchase Money Security Interest;
 - 8.3.2.4 be for a registration period of at least 7 years; and
 - 8.3.2.5 include a claim for proceeds of the Collateral as "All present and after acquired property".
- 8.3.3 The Customer must provide to Alfasi a copy of any Verification Statement issued to the Customer in connection with any Sub-hire upon request.
- 8.3.4 The Customer's obligations under this clause 8.3 do not, in any way, limit or exclude Alfasi's rights and the Customer's obligations under clause 11.4.

9. Amount Payable by the Customer

9.1 **Amounts Payable**

The Customer must pay:

- 9.1.1 the Hire Fee;
- 9.1.2 any and all rates, road taxes (if the Equipment is or include a motor vehicle) and other taxes such as GST (but excluding any income tax payable by Alfasi), outgoings, penalties, fines, demands, charges or costs, stamp and other duties and registration fees;
- 9.1.3 all premiums and any other amounts of whatever nature necessary or desirable in Alfasi's opinion to maintain each and all of the insurances required by clause 10.1 current; and
- 9.1.4 all repair and operating expenses in respect of the Equipment including (without limitation) the cost of fuel and lubricant and the cost of replacement Parts.

9.2 **Early Termination**

In the event that these Terms and Conditions are terminated prior to the Expiration Date or the Equipment is not required or otherwise returned to Alfasi by the Customer prior to the Expiration Date, the Customer acknowledges that the remaining Hire Fee up to the Expiration Date is payable by the Customer to Alfasi.

9.3 **Payment Terms**

All amounts payable by the Customer to Alfasi are payable prior to delivery of the equipment.

9.4 **Sanctions for Late Payment**

If the Customer defaults in making payment to Alfasi in accordance with these Terms and Conditions, Alfasi may in its absolute discretion:

- 9.4.1 charge the Customer interest calculated on the portion of the Customer's account overdue from time to time at the rate of 1.5% per month from the date on which such default arose; and
- 9.4.2 require the Customer to reimburse Alfasi for all collection costs incurred by Alfasi calculated on a solicitor and own client basis as a consequence of Alfasi instructing its solicitor to provide advice to it in connection with each default and/or to institute such recovery process as shall in the absolute discretion of Alfasi be appropriate in the circumstances.

9.5 **Price Change**

The prices shown in the Alfasi price list (as distributed by Alfasi from time to time) and in the Schedule are subject to change.

9.6 **GST**

9.6.1 In this clause;

- (a) GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended) and any related tax legislation or regulation;
 - (b) GST means goods and services tax within the meaning of the GST Act
- and, except where the contrary intention appears, expressions used in this clause have the meanings given to them in the GST Act.

9.6.2 If the party to these Terms and Conditions (**Supplier**) makes a taxable supply (**Supply**) under these Terms and Conditions, then the recipient of that Supply must also pay to the Supplier, at the same time as the consideration for the Supply is paid or otherwise given to the Supplier, an additional amount equal to any GST payable in connection with that Supply

9.6.3 The Supplier warrants that it is registered for GST under the GST Act.

9.6.4 The Supplier's right to payment under clause 9.6.2 is subject to a tax invoice being delivered to the recipient of that Supply to enable the recipient to claim input tax credits for the Supply.

9.6.5 If an adjustment due to an adjustment event results in the GST being different from that paid to the Supplier under clause 9.6.2 the Supplier:

- (a) must refund to the recipient any excess; and
- (b) may recover from the recipient any shortfall.

10. Insurance

- 10.1 Unless otherwise agreed in writing with Alfasi, where the Equipment consists of cranes, the Customer must take out and maintain during the Hire Period:
- 10.1.1 a comprehensive professional indemnity, public and products liability policy to cover all sums which the Customer may become legally liable to pay as compensation consequent upon:
- 10.1.1.1 death of, or bodily injury (including disease or illness) to, any person;
 - 10.1.1.2 loss of, or damage to, property;
 - 10.1.1.3 loss of, or damage to, the Equipment, for its full replacement value as specified by Alfasi; and
 - 10.1.1.4 loss or damage arising as a result of the Customer's breach of this agreement or its recklessness or negligence,
- happening anywhere in Australia arising out of or in connection with this Agreement. The limit of liability provided by this policy must be not less than \$10 million;
- 10.1.2 statutory workers compensation or employer's liability insurance;
- 10.1.3 other insurances required by law or reasonably required by Alfasi.
- 10.2 The insurance policy referred to in clause 10.1.1 will be effected in the Customer's name, and such insurance shall note the interests of Alfasi for its respective rights and interests.
- 10.3 At Alfasi's request, the Customer must produce evidence that it maintains the insurances required by this clause.
- 10.4 Alfasi is entitled to receive any amounts which are paid or payable to the Customer due to any of the events described in clauses 10.1.1.1 – 10.1.1.4 taking place. If the Customer receives these amounts, they are held on trust for Alfasi.

11. PPSA

- 11.1 The Customer acknowledges that pursuant to these Terms and Conditions it grants to Alfasi a Security Interest in the Secured Property.
- 11.2 The Customer consents to Alfasi effecting a registration on the PPSR (in any manner Alfasi considers appropriate) in relation to the Security Interest arising under or in connection with this agreement and the Customer agrees to provide all assistance required by Alfasi to facilitate this.
- 11.3 The Customer acknowledges and agrees that in relation to the part of the Secured Property that is inventory, the Customer will not allow any Security Interest to arise in respect of that Secured Property unless Alfasi has perfected its Security Interest in the Secured Property prior to the Customer's possession of the Secured Property.
- 11.4 If Chapter 4 of the PPSA applies to the enforcement of the Security Interest arising under or in connection with this agreement, the Customer agrees:
- 11.5 to the extent that section 115(1) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 95 to the extent that it requires Alfasi to give a notice to the Customer, section 96, section 121(4), section 125 (obligation to dispose of or retain collateral), section 130 to the extent that it requires the Secured Party to give notice to the Customer, paragraph 132(3)(d), subsection 132(4), section 142 and section 143 (reinstatement of security agreement); and
- 11.6 to the extent that section 115(7) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 127, section 129(2) and (3), section 132, section 134(2), section 135, section 136(3), (4) and (5) and section 137.
- 11.7 If the Customer makes payment to Alfasi at any time whether in connection with this agreement or otherwise, Alfasi may, at its absolute discretion, apply that payment in any manner it sees fit.
- 11.8 The Customer agrees to immediately notify Alfasi of any changes to its name or address (as specified in this agreement).
- 11.9 The Customer agrees to do anything Alfasi requests the Customer to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):
- 11.9.1 to provide more effective security over the Secured Property;
 - 11.9.2 to register in respect of a Security Interest constituted by this agreement at any time;
 - 11.9.3 to enable Alfasi to exercise its rights in connection with the Secured Property; and
 - 11.9.4 to show Alfasi whether the Customer has complied with this agreement.
- 11.10 The Customer shall pay on demand any losses arising from, and any costs and expenses incurred in connection with, any action taken by Alfasi under or in relation to the PPSA, including any registration, or any response to an amendment, demand or a request under section 275 of the PPSA.
- 11.11 Any notices or documents which are required or permitted to be given to Alfasi for the purposes of the PPSA must be given in accordance with the PPSA.
- 11.12 The Customer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

12. Disclosure

- 12.1 The Customer agrees not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d), if Alfasi approves.
- 12.2 Nothing in clause 12.1 will prevent any disclosure by Alfasi that it believes is necessary to comply with its other obligations under the PPSA or under any other applicable law.
- 12.3 To the extent that it is not inconsistent with clauses 12.1 or 12.2 above constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, the Customer agrees that Alfasi may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that Alfasi is not doing so in response to a request by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

13. Damage Waiver

- 13.1 The Customer is responsible for theft, loss and damage to the Equipment and the cost of replacement or repairs to the Equipment will be charged to the Customer.
- 13.2 Unless otherwise agreed in writing with Alfasi, where insurance has not been taken out in accordance with clause 10.1, the Customer may pay the Damage Waiver Amount to Alfasi. The Damage Waiver amount will be 12% of the hire charges unless agreed otherwise in writing with Alfasi.
- 13.3 If the Damage Waiver Amount has been paid to Alfasi, in the event of theft, loss or damage to the Equipment, Alfasi agrees upon prompt submission of a written police report by the Customer and subject to clause 13.4, to waive its right to claim for theft, loss or damage to the Equipment caused by fire, storm, collision, accident, theft or burglary for amounts over the excess payment of \$5,000. The Customer is responsible for payment of the first \$5,000 of the damage and all amounts above that will be waived in accordance with this clause. The excess amount may be varied in writing by agreement between Alfasi and the Customer.
- 13.4 Expressly excluded from the Damage Waiver are the following:
- 13.4.1 damage due to misuse, abuse or overloading of the Equipment or any component therefore;
 - 13.4.2 wrongful conversion of the Equipment or any components thereof;
 - 13.4.3 loss or damage in contravention of the conditions of these Terms and Conditions;
 - 13.4.4 loss or damage from use in violation of any statutory laws and regulations;
 - 13.4.5 loss or damage to tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels and other similar accessories;
 - 13.4.6 damage caused to tyres and tubes by blowout, bruises, cuts or other causes inherent in the use of the Equipment;
 - 13.4.7 glass breakage;
 - 13.4.8 loss or damage relating to lack of lubrication or other normal servicing of the Equipment;
 - 13.4.9 loss or damage to the Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
 - 13.4.10 loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-related or excessive length of extension leads on electrical powered tools and machines;
 - 13.4.11 damage caused by exposure to any corrosive substance including but not limited to caustic, cyanide, salt water, acid;
 - 13.4.12 theft of the Equipment unless reasonably locked and secured;
 - 13.4.13 loss or damage during transport except where transported by Alfasi;
 - 13.4.14 loss or damage arising from the Customer not taking adequate precautions to safeguard the Equipment;
 - 13.4.15 loss or damage to Equipment on which the Damage Waiver Amount is not charged or paid;
 - 13.4.16 loss or damage caused by the negligence of the Customer.

14. Representations and Warranties

14.1 **Customer's representations and warranties**

The Customer represents and warrants to Alfasi that:

- 14.1.1 Incorporation: (if the Customer is a corporation) it is registered as a company under the *Corporations Act 2001*, and has the power to carry on its business and to own its property in the manner and in the locations in which such business is presently being carried on;
- 14.1.2 Corporate power: (if the Customer is a corporation) it has full power and authority under its constitution or other constituent documents to enter into these Terms and Conditions and to do all things required by these Terms and Conditions, and all necessary meetings have been held and all resolutions have been passed and any other action necessary to authorise the execution and performance of these Terms and Conditions has been taken and these Terms and Conditions will constitute the legal, valid, binding and enforceable obligations of the Customer in accordance with their terms;
- 14.1.3 No breach: except as disclosed in writing to Alfasi and dispensed with in writing by Alfasi, neither the execution nor the performance of these Terms and Conditions will:
- 14.1.3.1 violate in any respect any statute, rule or regulation or any determination, order or award of any court or any governmental, judicial or public body or authority applicable to the Customer;
 - 14.1.3.2 cause any limitation (whether imposed by statute, decree, rule or regulation) on any of the powers of the Customer or on the Customer's right or ability to exercise such powers to be exceeded; or
 - 14.1.3.3 conflict with or result in any breach of, or require any consent or approval under, any mortgage, agreement or other undertaking or instrument to which the Customer is a party or which is binding upon the Customer or any of the Customer's assets; or
 - 14.1.3.4 result in a mortgage, charge, lien or other encumbrance over any of the Customer's assets; or
 - 14.1.3.5 cause any limit on the powers of the Customer in respect of borrowing, guaranteeing, raising financial accommodation or otherwise as the case may be, to be exceeded;
- 14.1.4 No existing default: except as disclosed in writing to Alfasi and dispensed with in writing by Alfasi, the Customer is not in default or difficulty under any deed, agreement or other document or obligation to which it is a party or by which it is bound, or in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities), which default or difficulty is reasonably likely to adversely affect the ability of the Customer to comply with its obligations under these Terms and Conditions;
- 14.1.5 No default: no event of default or event which, with the giving of notice or the lapse of time or both, would be an event of default has occurred or, having occurred, is continuing to subsist;
- 14.1.6 No litigation: except as disclosed in writing to Alfasi and dispensed with in writing by Alfasi, no litigation or administrative or other proceedings before or of any court or governmental authority or agency or other tribunal have, to the knowledge of the Customer, been initiated or threatened against the Customer or any of the

Customer's assets which would or might have a materially adverse effect upon the business, assets or financial condition of the Customer.

15. Exclusion of liability

15.1

Non-Excludable Guarantees

- 15.1.1 If the Equipment has a value or is of a kind ordinarily acquired for personal, domestic or household use or consumption or is otherwise a consumer contract such as to attract to these Terms and Conditions the operation of the provisions of the Competition and Consumer Act 2010 (Cth) (**CCA**) certain guarantees may be implied into these Terms and Conditions and rights and remedies may be conferred upon the Customer with respect to the Equipment which cannot be excluded, restricted or modified by agreement (**Non-Excludable Guarantees**).
- 15.1.2 If these Terms and Conditions constitute a consumer contract for the purposes of the CCA then, notwithstanding anything to the contrary in these Terms and Conditions you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage and you are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 15.1.3 The Customer acknowledges that with respect to any Non-Excludable Guarantees, Alfasi's liability is, where permitted, limited to replacement (or the cost of replacement) of the Equipment, the supply (or the cost of supply) of equivalent Equipment or the repair (or the cost of repair) of the Equipment.

15.2 The warranties given under these Terms and Conditions are given by Alfasi Equipment Hire Pty Ltd (ABN 79 091 696 692), of 110 Frankston Gardens Drive Carrum Downs Victoria . Ph – 1300 55 11 08. E: hire@alfasi.com.au].

15.3 **Implied terms and conditions regarding Equipment excluded**

Subject to clause 15.1, the Customer agrees that to the full extent permitted by law neither Alfasi gives, nor any person purporting to act with the authority of Alfasi has given, any condition, warranty or representation whatsoever in favour of the Customer:

- 15.3.1 as to the condition or quality of the Equipment including, without limitation, latent and other defects and whether or not discoverable by Alfasi or the Customer;
- 15.3.2 as to the suitability or fitness for ordinary or any special use or purpose of the Equipment; or
- 15.3.3 as to the correspondence by the Equipment to any description of them.

15.4 **Exclusion of liability for loss**

Subject to clause 15.1, in no event will Alfasi be liable (whether before or after the expiry or termination of these Terms and Conditions or the Hire Period) for any loss or damage which the Customer suffers arising from, or caused or contributed to by, Alfasi's negligence or the negligence of Alfasi's agents and employees. Nor will Alfasi be liable for special, indirect or consequential loss or damage as a result of a breach by Alfasi of these Terms and Conditions including, but not limited to, loss of profits or revenue, the costs arising from the loss of use of the Equipment and the costs of any substitute Equipment which the Customer acquires.

16. Indemnities

16.1 **Equipment used at Customer's risk**

The Customer agrees to use, operate and possess the Equipment at the Customer's risk. The Customer agrees that Alfasi will have no responsibility or liability for any loss or damage to any property belonging to the Customer. To the full extent permitted by law, the Customer releases and discharges Alfasi and its agents and employees from:

16.1.1 all claims and demands on Alfasi; and

16.1.2 any loss or damage whatsoever and whenever caused to the Customer or its agents or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise,

arising directly or indirectly from or incidental to a breakdown of, or defect in, the Equipment or any accident to or involving the Equipment or its use, operation, repair, maintenance or storage (whether occasioned by the negligence of Alfasi or otherwise) or which may otherwise be suffered or sustained in, upon or near the Equipment.

16.2 **Indemnity against other costs and liabilities**

The Customer assumes liability for, and indemnifies and will keep indemnified, protected, saved and harmless, Alfasi and its agents and employees from and against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including court costs and legal fees reasonably incurred) and of whatsoever kind and nature (including claims based upon strict liability in tort):

16.2.1 arising out of or alleged to arise out of the delivery, selection, purchase, acceptance or rejection, ownership, possession, use (including by reason of the use or incorporation of any invention resulting in infringements of patents), repair, maintenance, storage, or operation of the Equipment, and by whomsoever used or operated (except where used by Alfasi or any person on behalf of Alfasi); or

16.2.2 incurred by Alfasi in respect of any loss of the Equipment by seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment; or

16.2.3 arising out of any claim for patent, trademark or copyright infringement, for strict liability, or for any other reason being made against Alfasi in connection with the Equipment or its operation.

17. Termination

17.1 **Termination for default - events of default**

Each of the following events is an event of default, namely:

- 17.1.1 if the Customer fails to pay the Hire Fee or other moneys payable under these Terms and Conditions on the due date for payment and such failure continues for more than five business days;
- 17.1.2 if the Customer fails to perform or observe any of the provisions of these Terms and Conditions and (if capable of remedy) such default continues for more than five business days (or such longer period as Alfasi in its absolute discretion permits) after notice from Alfasi requiring the Customer to remedy the same;
- 17.1.3 if Alfasi ascertains that the Customer has made any false, inaccurate or misleading statement having a material effect in relation to entering into these Terms and Conditions or any related or collateral document;
- 17.1.4 if an application for the winding up or bankruptcy of the Customer or any of its related body corporate is presented and the Customer or the related body corporate (as the case may be) cannot within 10 business days reasonably satisfy Alfasi that the application is frivolous or vexatious;
- 17.1.5 an order is made, or any resolution is passed, for the winding up of the Customer or any related body corporate, provided always that it will not be an event of default where the winding up of the Customer or the related body corporate (as the case may be) is for the purpose of reconstruction or amalgamation and has Alfasi's prior written consent (which consent will not be unreasonably withheld);
- 17.1.6 if a receiver or receiver and manager or provisional liquidator of the undertaking or any part of the undertaking of the Customer or any related body corporate is appointed;
- 17.1.7 if without Alfasi's prior written consent the Customer or any related body corporate suspends payment generally or ceases to carry on its business or is unable to pay its debts within the meaning of s 460 of the *Corporations Act 2001*;
- 17.1.8 if without Alfasi's prior written consent the Customer or any related body corporate enters into any arrangement, reconstruction or composition with its creditors or any of them;
- 17.1.9 if the Customer or any related body corporate appoints an administrator to the Customer or the related body corporate, or begins any process in order to do so;
- 17.1.10 if without Alfasi's prior written consent (which consent will not be unreasonably withheld) the Customer or any related body corporate reduces its share capital or attempts to do so; or
- 17.1.11 if, in the opinion of Alfasi there is a material adverse change in the financial condition of the Customer.

17.2 **Consequences of default**

If an event of default occurs, Alfasi may terminate these Terms and Conditions by notice in writing to the Customer.

Upon service of such notice, all rights of the Customer to or in the use of the Equipment will terminate and Alfasi may, directly or by its agent, take possession of the Equipment. Any damages reasonably occasioned by Alfasi taking possession are expressly waived by the Customer. Alfasi will, upon taking possession of the Equipment hold, possess and enjoy the Equipment free from any right of the Customer or its successors or assigns to use the Equipment for any purpose.

17.3 **Termination for convenience**

Without prejudice to any other remedies available to Alfasi and notwithstanding any period of hire specified in these Terms and Conditions, Alfasi may terminate these Terms and Conditions at any time by giving to the Customer 72 hours' notice of its intention to terminate. Alfasi is not liable to the Customer for any loss or damage arising to the Customer as a result of termination in accordance with this clause.

18. General

- 18.1 The only contractual terms which are binding upon Alfasi are those set out in these Terms and Conditions or otherwise agreed to in writing by Alfasi and those, if any, which are imposed by law and which cannot be excluded by these Terms and Conditions. Any terms and conditions of the Customer included on documents submitted to Alfasi are expressly excluded and do not apply.
- 18.2 All previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied, including any collateral agreement or warranty between the Customer and Alfasi, are excluded and cancelled.
- 18.3 If any of these Terms and Conditions are found to be void, voidable or unenforceable the validity and enforceability of the remaining provision shall not in any way be affected or impaired.
- 18.4 A waiver by either party of any breach or failure to enforce or to insist upon the observance of a condition of these Terms and Conditions will not be a waiver of any other or of any subsequent breach.
- 18.5 This Terms and Conditions can only be amended, supplemented or replaced by another document signed by the Customer and Alfasi.
- 18.6 The Customer may not assign these Terms and Conditions without Alfasi's prior written consent.
- 18.7 Time is of the essence in relation to these Terms and Conditions.
- 18.8 These Terms and Conditions and any agreement including them shall be governed by the law of the State of Victoria and Alfasi and the Customer submit to the jurisdiction of the Courts of that State.