

APPLICATION FOR CREDIT ACCOUNT

and

TERMS AND CONDITIONS OF EQUIPMENT HIRE

Please complete this form and return original (faxed copies are not acceptable) so that we can process your application and advise you of the outcome as soon as possible.

NOTES FOR GUIDANCE

PART A	To be completed by all applicants.
PART B	To be completed by sole traders and partnerships.
PART C	To be completed by companies.
PART D	To be completed by all applicants.
PART E	To be signed by all applicants.
PART F	Personal guarantee, to be completed by each director if the applicant is a company.

PART A – (ALL APPLICANTS MUST COMPLETE)

APPLICANT:
 FULL TRADING NAME:
 TRADING ADDRESS: STATE: POSTCODE:
 REGISTERED OFFICE: STATE: POSTCODE:
 POSTAL ADDRESS: POSTCODE:
 TYPE OF BUSINESS: HOW LONG ESTABLISHED:
 PHONE NO: FAX NO: MOBILE NO:
 BANK: BRANCH:
 BANK CONTACT PERSON : CONTACT NO: POSITION:
 PREMISES OWNED: BUYING LEASED CREDIT LIMIT REQUIRED: \$
 IF PREMISES OWNED: A) VALUE: \$
 B) IS IT SUBJECT TO A MORTGAGE OR OTHER CHARGE? YES/NO
 IF YES, TO WHOM? AMOUNT OF MORTGAGE OR CHARGE: \$
 IS THERE ANY MORTGAGE, BILL OF SALE, OR OTHER CHARGE OVER ANY OTHER ASSET OF THE BUSINESS? YES/NO
 IF YES, GIVE PARTICULARS:
 IF PREMISES LEASED, NAME OF LANDLORD: CONTACT PHONE NO:
 TRADE REFERENCES (firms from whom goods are obtained on credit):
 1. NAME: ADDRESS: TEL:
 2. NAME: ADDRESS: TEL:
 3. NAME: ADDRESS: TEL:
 ACCOUNTS PAYABLE OFFICER: TEL:
 ACCOUNTS EMAIL ADDRESS:
 DOES YOUR BUSINESS USE OR ISSUE PURCHASE ORDER NUMBERS FOR EACH ORDER YES / NO
 OFF HIRE NOTIFICATION EMAIL ADDRESS:

PART B - (TO BE COMPLETED BY SOLE TRADERS & PARTNERSHIPS)

FULL TRADING NAME: ABN NO:
 FULL NAME OF SOLE TRADER OR 1ST PARTNER:
 ADDRESS: POSTCODE;
 DATE OF BIRTH: DRIVER'S LICENCE NO: OCCUPATION:
 EMAIL:
 FULL NAME OF 2ND PARTNER:
 ADDRESS: POSTCODE:
 DATE OF BIRTH: DRIVER'S LICENCE NO: OCCUPATION:
 EMAIL:

PART C - (TO BE COMPLETED BY COMPANIES)

FULL COMPANY NAME: ACN :
 DATE OF INCORPORATION: ABN:
 DIRECTOR/S FULL NAMES AND ADDRESSES:
 1.
 2.
 3.
 4.

PART D - FINANCIAL HISTORY

	Please circle
HAVE YOU EVER BEEN DECLARED BANKRUPT OR USED PART 10 OF THE BANKRUPTCY ACT (CTH) 1966	YES/NO
HAVE YOU EVER BEEN BANNED OR DISQUALIFIED FROM BEING A DIRECTOR OR MANAGING A CORPORATION	YES/NO
HAVE YOU EVER BEEN INVOLVED WITH THE MANAGEMENT OR CONTROL OF A BUSINESS WHICH HAS GONE INTO LIQUIDATION, BEEN IN RECEIVERSHIP OR ENTERED INTO A SCHEME FOR THE BENEFIT OF ITS CREDITORS	YES/NO

PART E - (ALL APPLICANTS MUST SIGN)

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 carefully and sign where indicated on page 10.

1. Definitions

In the Terms and Conditions, 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 10.3.

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.

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.

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, lend, lease, hire, part with possession of, or otherwise dispose of or deal with the Equipment or any part thereof.
- 6.4 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.
- 6.5 The Customer acknowledges and agrees:
- 6.5.1 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
- 6.5.2 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.
- 6.6 If a Security becomes enforceable:
- 6.6.1 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
- 6.6.2 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 forgoing, 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.

- 7.3 **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 determines 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 Customers 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. Amount Payable by the Customer

8.1 Amounts Payable

The Customer must pay:

- 8.1.1 the Hire Fee;
- 8.1.2 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), outgoing, penalties, fines, demands, charges or costs, stamp and other duties and registration fees;
- 8.1.3 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 9.1 current; and
- 8.1.4 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.

8.2 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.

8.3 Payment Terms

All amounts payable by the Customer to Alfasi are payable within 30 days of the date of the invoice.

8.4 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:

- 8.4.1 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
- 8.4.2 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.

8.5 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.

8.6 GST

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.
- 8.6.2 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
- 8.6.3 The Supplier warrants that it is registered for GST under the GST Act.
- 8.6.4 The Supplier's right to payment under clause 8.6.2 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.
- 8.6.5 If an adjustment due to an adjustment event results in the GST being different from that paid to the Supplier under clause 8.6.2 the Supplier:
 - (a) must refund to the recipient any excess; and
 - (b) may recover from the recipient any shortfall.

9. Insurance

9.1 Unless otherwise agreed in writing with Alfasi, where the Equipment consists of cranes, the Customer must take out and maintain during the Hire Period:

- 9.1.1 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:
 - 9.1.1.1 death of, or bodily injury (including disease or illness) to, any person;
 - 9.1.1.2 loss of, or damage to, property;
 - 9.1.1.3 loss of, or damage to, the Equipment, for its full replacement value as specified by

- 9.1.1.4 Alfasi; and 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;
- 9.1.2 statutory workers compensation or employer's liability insurance;
- 9.1.3 other insurances required by law or reasonably required by Alfasi.
- 9.2 The insurance policy referred to in clause 9.1.1 will be effected in the Customer's name, and such insurance shall note the interests of Alfasi for its respective rights and interests.
- 9.3 At Alfasi's request, the Customer must produce evidence that it maintains the insurances required by this clause.
- 9.4 Alfasi is entitled to receive any amounts which are paid or payable to the Customer due to any of the events described in clauses 9.1.1.1 – 9.1.1.4 taking place. If the Customer receives these amounts, they are held on trust for Alfasi.

10. Damage Waiver

- 10.1 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.
- 10.2 Unless otherwise agreed in writing with Alfasi, where insurance has not been taken out in accordance with clause 9.1, the Customer may pay the Damage Waiver Amount to Alfasi.
- 10.3 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 10.4, to waive its right to claim for theft, loss or damage to the Equipment caused by fire, storm, collision, accident, theft or burglary.
- 10.4 Expressly excluded from the Damage Waiver are the following:
 - 10.4.1 damage due to misuse, abuse or overloading of the Equipment or any component therefore;
 - 10.4.2 wrongful conversion of the Equipment or any components thereof;
 - 10.4.3 loss or damage in contravention of the conditions of these Terms and Conditions;
 - 10.4.4 loss or damage from use in violation of any statutory laws and regulations;
 - 10.4.5 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;
 - 10.4.6 damage caused to tyres and tubes by blowout, bruises, cuts or other causes inherent in the use of the Equipment;
 - 10.4.7 glass breakage;
 - 10.4.8 loss or damage relating to lack of lubrication or other normal servicing of the Equipment;
 - 10.4.9 loss or damage to the Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
 - 10.4.10 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;
 - 10.4.11 damage caused by exposure to any corrosive substance including but not limited to caustic, cyanide, salt water, acid;
 - 10.4.12 theft of the Equipment unless reasonably locked and secured;
 - 10.4.13 loss or damage during transport except where transported by Alfasi;
 - 10.4.14 loss or damage arising from the Customer not taking adequate precautions to safeguard the Equipment;
 - 10.4.15 loss or damage to Equipment on which the Damage Waiver Amount is not charged or paid;
 - 10.4.16 loss or damage caused by the negligence of the Customer.

11. Representations and Warranties

11.1 Customer's representations and warranties

The Customer represents and warrants to Alfasi that:

- 11.1.1 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;
- 11.1.2 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;
- 11.1.3 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:
 - 11.1.3.1 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;
 - 11.1.3.2 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
 - 11.1.3.3 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
 - 11.1.3.4 result in a mortgage, charge, lien or other encumbrance over any of the Customer's assets; or
 - 11.1.3.5 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;

- 11.1.4 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;
- 11.1.5 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;
- 11.1.6 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.

12. Exclusion of liability

12.1 Non-excludable terms and conditions

- 12.1.1 If the Equipment has a value or is of a kind ordinarily acquired for personal, domestic or household use or consumption such as to attract to these Terms and Conditions the operation of the provisions of the Trade Practices Act 1974 (Cth) or any comparable legislation of any other State or Territory, certain conditions and warranties will be implied into these Terms and Conditions and rights and remedies will be conferred upon the Customer with respect to the Equipment which cannot be excluded, restricted or modified by agreement (**non-excludable terms**).
- 12.1.2 The Customer acknowledges that with respect to any non-excludable terms, 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.

12.2 Implied terms and conditions regarding Equipment excluded

Subject to clause 12.1, 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:

- 12.2.1 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;
- 12.2.2 as to the suitability or fitness for ordinary or any special use or purpose of the Equipment; or
- 12.2.3 as to the correspondence by the Equipment to any description of them.

12.3 Exclusion of liability for loss

Subject to clause 12.1, 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.

13. Indemnities

13.1 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:

- 13.1.1 all claims and demands on Alfasi; and
- 13.1.2 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.

13.2 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):

- 13.2.1 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
- 13.2.2 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
- 13.2.3 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.

14. Termination

14.1 Termination for default - events of default

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

- 14.1.1 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 day;
- 14.1.2 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;
- 14.1.3 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;
- 14.1.4 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;
- 14.1.5 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);
- 14.1.6 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;
- 14.1.7 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*;
- 14.1.8 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;
- 14.1.9 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;
- 14.1.10 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
- 14.1.11 if, in the opinion of Alfasi there is a material adverse change in the financial condition of the Customer.
- 14.2 **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.
- 14.3 **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.
15. **General**
- 15.1 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.
- 15.2 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.
- 15.3 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.
- 15.4 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.
- 15.5 This Terms and Conditions can only be amended, supplemented or replaced by another document signed by the Customer and Alfasi.
- 15.6 The Customer may not assign these Terms and Conditions without Alfasi's prior written consent.
- 15.7 Time is of the essence in relation to these Terms and Conditions.
- 15.8 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.

The Customer agrees to comply and abide with the Terms and Conditions of Equipment Hire as set out in this Part E, if the application for a credit account is accepted:

<p>Sole Traders - Partnerships – Proprietors of Business (Part B) (Must Complete)</p> <p>SIGNATURE 1:</p> <p>.....</p> <p>WITNESS:</p> <p>DATE:</p>	<p>Companies (Part C) (Must Complete)</p> <p>EXECUTED by</p> <p>by being signed by:</p> <p>.....</p> <p>Signature of director Signature of dir/sec</p> <p>.....</p> <p>Name of director Name of dir/sec</p>
<p>Partnerships – Proprietors of Business (Part B) (Must Complete)</p> <p>SIGNATURE 2:</p> <p>.....</p> <p>WITNESS:</p> <p>DATE:</p>	

PART F - PERSONAL GUARANTEE AND INDEMNITY

I/We
of

do hereby declare that I/we are jointly and severally responsible for all monies payable to Alfasi pursuant to these Terms and Conditions of Equipment Hire as if we were the Customer described therein. We hereby indemnify and shall keep Alfasi indemnified against each and every loss it shall sustain by reason of the Customer's failure to comply with these Terms and Conditions of Equipment Hire. We grant our authority and consent to Alfasi assessing me/us as guarantors of the Customer.

SIGNATURE: WITNESS:
DATE: ADDRESS:

SIGNATURE: WITNESS:
DATE: ADDRESS:

FOR OFFICE USE ONLY

RESULTS OF REFERENCES

1.
2.
3.
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SALES REPRESENTATIVE:
NAME : SIGNED : DATE:
SALAS MANAGER/CRANE DIVISION MANAGER REVIEWED: DATE:

ACCOUNT APPROVED BY (SIGNED): DATE:
ACCOUNT NO: DATE OPENED:
CREDIT LIMIT APPROVED: \$..... OTHER:
SALES REPRESENTATIVE: