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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.

Please note: \$150+GST application fee will apply once your credit facility approved. You will receive a refund of \$200+GST if your turnover for the first 6 months exceeds \$5,000+GST.

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 E | To be signed by all applicants. |
| PART F | Personal guarantees:
F1 to be completed by each director if the applicant is a company. |
| PART G | To be completed by all applicants. |

OFFICE USE ONLY

DUNN & BRADSTREET REPORT:
NCI INSURANCE – DECISION:
ALFASI HIRE – FINANCIAL CONTROLLER – REVIEWED:.....
CREDIT LIMIT APPROVED-

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:
 TEL:..... E-mail:
 BANK: BRANCH:
 TRADE REFERENCES (firms from whom goods are obtained on credit): Credit limit required:
 1. NAME:E-mail: TEL:
 2. NAME:E-mail: 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:
 DW (Damage Waiver) required (Please tick) Yes No (If no please attach certificate of currency, [subject to approval by Alfasi insurer.

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 - (ALL APPLICANTS MUST SIGN)

These Terms apply to all Equipment hired by Alfasi to the Customer. By completing or executing the Credit Application Form or submitting a purchase order, you agree to be bound by these Terms.

1. Definitions

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

ACL means the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010*.

Alfasi means Alfasi Hire, a division of Alfasi Equipment Hire Pty Ltd.

Application Form means the standard application form provided by Alfasi for the hire of the Equipment.

Business Day means any day other than a Saturday, Sunday, or a bank holiday or a public holiday in Victoria and a reference to a date which does not fall on a Business Day is to be construed as a reference to the next Business Day.

Commencement Date means the date set out in Schedule 1.

Credit Account means any billing arrangement Alfasi has extended to the Customer upon Alfasi's approval of the Credit Application.

Credit Application means any application for a Credit Account completed by the Customer.

Customer means the entity hiring the Equipment the subject of these Terms.

Damage Waiver means the waiver provided by Alfasi to the Customer in accordance with clause 15.

Damage Waiver Amount means the amount payable for the Damage Waiver as set out in Schedule 1.

Equipment means the EWPs and cranes, as set out in Schedule 1.

Expiration Date means the date set out in Schedule 1.

EWP means an elevating work platform.

Guarantor means the person set out in Schedule 1.

Hire Fee means the hire fee specified in Schedule 1, 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 Schedule 1, unless otherwise terminated in accordance with these Terms.

Location means the address where the Equipment is delivered as set out in Schedule 1.

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.

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.

Terms means these terms and conditions of equipment hire.

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

2. Hire of Equipment

- 2.1 Alfasi will hire to the Customer the Equipment in accordance with these Terms.
- 2.2 This agreement commences on the Commencement Date and will complete on the Expiration Date.

3. Supply and Return of Equipment

- 3.1 Except as otherwise agreed in writing with Alfasi, it is the Customer's responsibility to obtain and return the Equipment to Alfasi during normal business hours.
- 3.2 Delivery of the Equipment to the Location and return of the Equipment to Alfasi is at the Customer's own expense.
- 3.3 Subject to normal wear and tear, if the Equipment is not returned to Alfasi in a clean condition and/or good working order, the Customer will be charged Alfasi's costs in bringing the Equipment to this condition.

4. Acceptance, Risk and Title

- 4.1 As at the Commencement Date, the Customer acknowledges that the Customer has inspected the Equipment and 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.
- 4.2 The Customer will be deemed to have accepted the Equipment and risk will have passed to the Customer:
 - 4.2.1 where Alfasi delivers the Equipment, upon delivery of the Equipment to the Location; or
 - 4.2.2 upon the Customer or its agent taking possession of the Equipment.
- 4.3 The Customer acknowledges that Alfasi owns the Equipment and in all circumstances Alfasi retains title to the Equipment. The Customer's rights to use the Equipment are as a bailee only.
- 4.4 The Customer must not, and must not attempt to, sell or offer for sale, assign, mortgage, pledge, charge, encumber, or otherwise dispose of or part with the Equipment or any part thereof in the Hire Period without Alfasi's prior written consent.

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.
- 5.2 The Customer must not remove the Equipment from the Location or part with possession of the Equipment without Alfasi's prior written consent.

6. Customer's Obligations

- 6.1 **Cleaning and Maintenance:** The Customer warrants that it will:
 - 6.1.1 clean, fuel, lubricate and keep the Equipment in proper working order and condition and in good and substantial repair at the Customer's own cost;
 - 6.1.2 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;
 - 6.1.3 not in any way alter, modify, tamper with, damage or repair the Equipment without Alfasi's prior written consent;
 - 6.1.4 not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment;
 - 6.1.5 ensure that the Equipment is returned with a full tank of fuel at the Customer's own cost or repay any fees charged by Alfasi for refuelling the Equipment, at Alfasi's election; and
 - 6.1.6 unless otherwise agreed with Alfasi, where the Equipment consists of cranes, service the Equipment using Alfasi approved service providers in accordance with the instructions, recommendations, and specifications of the manufacturer and in accordance with Australian standards at the Customer's own cost.
- 6.2 **Operation of Equipment:** The Customer warrants that it will:
 - 6.2.1 operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - 6.2.2 ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to perform high risk work;
 - 6.2.3 if the Equipment includes vehicles, only operate the registered vehicles on public roads;
 - 6.2.4 wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Alfasi or the manufacturer;
 - 6.2.5 ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
 - 6.2.6 conduct a job safety analysis prior to using the Equipment;
 - 6.2.7 ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment;
 - 6.2.8 display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment; and
 - 6.2.9 acquire and incorporate any additional or other Part that is required to be acquired, incorporated or installed in, or attached or made to, the Equipment in order to comply with any and all applicable laws. Any such additional or other Part will, unless otherwise agreed in writing by Alfasi, become the property of Alfasi and be considered part of the Equipment for all purposes.
- 6.3 **Replacement of Parts:**
 - 6.3.1 The Customer warrants that in relation to EWP's it will:
 - 6.3.1.1 replace all Parts, with reasonable promptness, 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;

- 6.3.1.2 ensure that all replacement Parts have a value and utility at least equal to the Parts replaced in their condition and repair required to be maintained under these Terms;
- 6.3.1.3 accept full responsibility for the cost of replacing such Parts; and
- 6.3.1.4 agree that all replacement Parts will become the property of Alfasi free of any liens, charges or other encumbrances.

6.3.2. Alfasi will be responsible for the replacement of all crane Parts at the Customer's cost, except for scheduled repairs or maintenance.

6.4 **Inspection of Equipment:** The Customer agrees to allow Alfasi and any properly qualified expert retained by Alfasi to enter the Customer's premises and do any such act Alfasi deems necessary to properly inspect and maintain the Equipment from time to time without prior notice during the Hire Period during normal working hours.

6.5 **Repair of Equipment:**

6.5.1. The Customer agrees that in relation to EWP's:

6.5.1.1 it will undertake repairs or replacement of the EWP within a reasonable time upon receiving a written notice from Alfasi of any defect or deficiency in the EWP or the Customer's operation of the EWP or both for which the Customer is responsible under these Terms; and

6.5.1.2 if the Customer fails to carry out its obligations under clause 6.5.1.1, Alfasi and its agents may enter the Customer's premises for the purpose of carrying out the repairs or replacement of the EWP.

6.5.2. The Customer agrees that in relation to cranes, where the Customer or Alfasi has identified that the crane requires any repairs or maintenance, the Customer will allow Alfasi to come onto the Customer's site to undertake the repairs and maintenance.

6.5.3. Under this clause, where Alfasi, acting reasonably, considers the repairs or maintenance of the Equipment is as a result of the Customer's acts or omissions, the Customer will be responsible for all costs in undertaking the repair or maintenance. The Customer will not be charged for scheduled repairs and maintenance as advised by Alfasi.

7. **Breakdown of Equipment**

7.1 In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period, the Customer must:

- 7.1.1. notify Alfasi immediately;
- 7.1.2. immediately stop using the broken down Equipment;
- 7.1.3. take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the Equipment; and
- 7.1.4. not repair, or attempt to repair, the Equipment without first receiving written notice from Alfasi in accordance with clause 6.5.1.1.

7.2 If the Equipment has broken down or becomes unsafe to use as a result of the Customer's acts or omissions (or its employees or contractors), the Customer will be liable for:

- 7.2.1. any costs incurred by Alfasi to repair or replace the Equipment; and
- 7.2.2. the Hire Fee for that portion of the Hire Period during which the Equipment is being repaired or replaced.

7.3 Subject to clause 7.2, if the Customer notifies Alfasi immediately of a breakdown, Alfasi may determine not to charge the Hire Fee during the time in which the Equipment is not working.

8. **Loss, Damage or Theft of Equipment**

8.1 In the event that the Equipment becomes lost, damaged or stolen, the Customer must immediately notify Alfasi.

8.2 If the Equipment is lost, damaged beyond fair wear and tear or stolen during the Hire Period, the Customer will be liable for:

- 8.2.1. any costs incurred by Alfasi to recover the Equipment; and
- 8.2.2. all other costs listed in clauses 7.2.1 and 7.2.2.

8.3 Notwithstanding clause 8.2, where the Customer has paid the Damage Waiver Amount, the Customer's liability in respect of theft, loss or damage to the Equipment will be subject to clause 15 below.

9. **Sub-hire of the Equipment**

9.1 The Customer must not sub-hire the Equipment to any third party without the prior written consent of Alfasi, at its absolute discretion.

9.2 The Customer may only sub-hire the Equipment to a third party on the same or substantially similar terms to these Terms (**Sub-hire Terms**).

9.3 The Customer agrees and acknowledges that, if the Customer is in default of these Terms or the Sub-hirer is in default of the Sub-hire Terms, Alfasi may exclusively exercise the rights of the Customer, on behalf of the Customer, under the Sub-hire Terms.

9.4 The Customer indemnifies Alfasi against, and must pay to Alfasi on demand, all costs incurred by Alfasi in taking any steps to enforce the Customer's rights under clause 9.3.

10. **Amount Payable by the Customer**

10.1 The Customer must pay Alfasi the Hire Fee in accordance with this Terms.

10.2 The Customer can use the Equipment during a normal 56 hour week. Any additional use in excess of 56 hour week will incur additional charges in accordance with Alfasi's current additional hire fees or as otherwise agreed between the parties.

10.3 In addition to the fees provided in clauses 10.1 and 10.2, the Customer agrees to pay:

- 10.3.1. 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;
- 10.3.2. 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; and
- 10.3.3. all other costs and expenses required under these Terms.

10.4 In the event that these Terms are terminated prior to the Expiration Date due to the default of the Customer 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.

11. Payment Terms

- 11.1 All amounts payable by the Customer to Alfasi are payable within 14 days of the date of the invoice.
- 11.2 If the Customer defaults in making payment to Alfasi in accordance with these Terms, Alfasi may in its absolute discretion:
- 11.2.1. charge the Customer interest on the overdue amount; and
 - 11.2.2. require the Customer to reimburse Alfasi for all collection costs (on a full indemnity basis) incurred by Alfasi.

12. GST

- 12.1 In this clause:

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended) and any related tax legislation or regulation;

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.

- 12.1.1. If the party to these Terms (Supplier) makes a taxable supply (Supply) under these Terms, 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.
- 12.1.2. The Supplier warrants that it is registered for GST under the GST Act.
- 12.1.3. The Supplier's right to payment under clause 12.1.1 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.
- 12.1.4. If an adjustment due to an adjustment event results in the GST being different from that paid to the Supplier under clause 12.1.1 the Supplier:
 - 12.1.4.1 must refund to the recipient any excess; and
 - 12.1.4.2 may recover from the recipient any shortfall.

13. PPSA

- 13.1 If Alfasi determines, in its absolute discretion, that the PPSA applies to a transaction under these Terms, the Customer agrees to:
- 13.1.1. grant Alfasi a Security Interest in the Secured Property; and
 - 13.1.2. do all things necessary or reasonably requested by Alfasi to enable Alfasi to:
 - 13.1.2.1 register and perfect its Security Interest in the Secured Property on the PPSR;
 - 13.1.2.2 exercise its rights in connection with the Secured Property; and
 - 13.1.2.3 confirm whether the Customer has complied with these Terms.
- 13.2 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.
- 13.3 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:
- 13.3.1. 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, section 132(3)(d), section 132(4), section 142 and section 143 (reinstatement of security agreement); and
 - 13.3.2. 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, sections 129(2) and (3), section 132, section 134(2), section 135, sections 136(3), (4) and (5) and section 137.
- 13.4 The Customer agrees to immediately notify Alfasi of any changes to its name or address (as specified in this agreement).
- 13.5 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.
- 13.6 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.
- 13.7 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.

14. Insurance

- 14.1 Unless otherwise agreed in writing with Alfasi, the Customer must take out and maintain the following policies of insurance during the Hire Period:
- 14.1.1. Public and products liability insurance with a limit of not less than \$10 million;
 - 14.1.2. Contractors Mobile Plant & Equipment insurance with a limit of not less than market value or the amount specified by Alfasi;
 - 14.1.3. workers compensation or employer's liability insurance as required by law; and
 - 14.1.4. any other insurances required by law or reasonably required by Alfasi.
- 14.2 The insurance policies referred to in clause 14.1.1 will be effected in the Customer's name, and such insurance shall note the interests of Alfasi for its respective rights and interests.
- 14.3 At Alfasi's request, the Customer must produce evidence that it maintains the insurances required by this clause.
- 14.4 Alfasi is entitled to receive any amounts which are paid or payable to the Customer due to any of the events described in clauses 14.1.6, 14.1.7 and 14.1.8.

15. Damage Waiver

- 15.1 The Customer may elect to either pay the Damage Waiver Amount or obtain insurance covering the full replacement value of the Equipment.
- 15.2 If the Customer elects to obtain insurance coverage it must provide Alfasi copies of the certificates of currency as requested by Alfasi. If the Customer elects to pay the Damage Waiver Amount, it will be automatically charged to the Customer in addition to the hire fees for the

Equipment.

- 15.3 Subject to clause 15.6, if the Customer elects to pay the Damage Waiver Amount 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 15.6, 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 as detailed in clause 15.4. The Customer is responsible for payment to Alfasi of the excess in clause 15.4 and all amounts above that will be waived in accordance with this clause.
- 15.4 The excess is calculated as follows:
- 15.4.1. for hired-out equipment (excluding cranes): the excess is the greater of:
- 15.4.1.1 1% of market value; or
- 15.4.1.2 \$5,000 plus the 7 day hire fee for the Equipment;
- 15.4.2. for cranes: the excess is the greater of:
- 15.4.2.1 1% of market value; or
- 15.4.2.2 \$10,000 plus the 7 day hire fee for the Equipment.
- 15.5 The excess amount may be varied in writing by agreement between Alfasi and the Customer.
- 15.6 Even if the Customer pays the Damage Waiver Amount, the Customer will be liable for and indemnifies Alfasi for all loss, theft or damage to the Equipment if:
- 15.6.1. the damage was due to misuse, abuse or overloading of the Equipment or Parts;
- 15.6.2. there occurred wrongful conversion of the Equipment or Parts;
- 15.6.3. the loss or damage was in contravention of these Terms;
- 15.6.4. the loss or damage was from use in violation of any statutory laws and regulations;
- 15.6.5. the loss or damage was to tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels and other similar accessories;
- 15.6.6. the damage caused to tyres and tubes was by blowout, bruises, cuts or other causes inherent in the use of the Equipment;
- 15.6.7. glass breakage;
- 15.6.8. the loss or damage was a consequence of lack of lubrication or other normal servicing of the Equipment;
- 15.6.9. the loss or damage to the Equipment occurred whilst the Equipment was located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- 15.6.10. the loss or damage to motors or other electrical appliances or devices was caused by overloading or artificial electrical current, including use of under-related or excessive length of extension leads on electrical powered tools and machines;
- 15.6.11. the damage was caused by exposure to any corrosive substance including but not limited to caustic, cyanide, salt water, acid;
- 15.6.12. theft of the Equipment unless the Equipment was reasonably locked and secured;
- 15.6.13. the loss or damage occurred during transport except where transported by Alfasi;
- 15.6.14. the loss or damage arose from the Customer not taking adequate precautions to safeguard the Equipment;
- 15.6.15. the loss or damage occurred before the Customer paid the Damage Waiver Amount; or
- 15.6.16. the loss or damage was caused by the negligence of the Customer.

16. Exclusion of Liability and Indemnities

- 16.1 Nothing in these Terms is intended to exclude, restrict, or modify any guarantee, term, condition or warranty implied or imposed by law (including the ACL) which cannot be lawfully excluded or limited (**Non-Excludable Guarantees**).
- 16.2 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.
- 16.3 Subject to Alfasi's obligations under the Non-Excludable Guarantees, and to the maximum extent permitted by law, Alfasi's maximum aggregate liability for all claims arising under or relating to these Terms or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the Hire Fee paid by the Customer under these Terms.
- 16.4 Subject to clause 16.1, to the extent permitted by law (unless otherwise expressly set out in these Terms), all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to Alfasi's obligations under these Terms are excluded.
- 16.5 Except as required by law, in no circumstances will Alfasi be liable for:
- 16.5.1. any loss or damage which the Customer suffers arising from, or caused or contributed to by, the Customer's acts or omissions; and
- 16.5.2. any special, indirect, or consequential loss or damage (including but not limited to loss of actual or anticipated revenue, business interruption, loss of production or economic loss of any kind).
- 16.6 Except to the extent excluded by law, the Customer indemnifies Alfasi against any losses, damages, claims, liabilities, expenses, payments or outgoings (**Liabilities**) incurred by Alfasi to the extent the Liabilities were caused by the Customer's, or its agent's, officers', sub-contractors' or employees', acts or omissions or its breach of its obligations under these Terms. The Customer's liability to indemnify under this clause shall be proportionally reduced to the extent Alfasi's negligent or wilful acts or omissions directly caused or contributed to the Liabilities.

17. Termination

- 17.1 Either party may terminate these Terms with immediate effect by serving a written notice on the other party if:
- 17.1.1. the other party becomes unable to lawfully perform its obligations under these Terms;
- 17.1.2. the other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business; or
- 17.1.3. commits a breach of these Terms which it does not remedy (if capable of remedy) within 5 Business Days of receiving written notice of breach.
- 17.2 Alfasi may also terminate these Terms at any time for any reason for convenience by giving the Customer at least 30 days' notice.
- 17.3 Alfasi may terminate these Terms immediately if the Customer or any third party has made a false statement in, or breached any provision of the Credit Application.

17.4 These rights of termination are in addition to any other rights either party has under these Terms and does not exclude any right or remedy under law or equity.

18. Guarantee

18.1 The Customer must guarantee all payments due and owing to Alfasi under these Terms by providing either a director's guarantee on the terms included at Schedule 2 of these Terms for and on behalf of the Customer.

19. Security and Charge

19.1 In the event a Customer has not paid an invoice within 75 days of receipt of the invoice or is in material breach of a term of these Terms, despite anything to the contrary contained in these Terms:

19.1.1. where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Alfasi to secure all amounts and other monetary obligations payable under these Terms. The Customer and/or the Guarantor acknowledge and agree that Alfasi shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable under these Terms have been met; and

19.1.2. should Alfasi elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Alfasi from and against all Alfasi's costs and disbursements including legal costs on a solicitor and own client basis.

19.2 The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Alfasi as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of clause 19.1.

20. Consumer Contracts and Small Business Contracts

20.1 Where these Terms would be subject to the application of Part 2-3 of the ACL, the following provisions do not apply:

20.1.1. clause 0; and

20.1.2. clause 17.2.

21. General

21.1 The only contractual terms which are binding upon Alfasi are those set out in these Terms 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. Any terms and conditions of the Customer included on documents submitted to Alfasi are expressly excluded and do not apply.

21.2 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.

21.3 If any of these Terms are found to be void, voidable or unenforceable the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.

21.4 A waiver by either party of any breach or failure to enforce or to insist upon the observance of a condition of these Terms will not be a waiver of any other or of any subsequent breach.

21.5 These Terms can only be amended, supplemented or replaced by another document signed by the Customer and Alfasi.

21.6 The Customer may not assign these Terms without Alfasi's prior written consent.

21.7 Time is of the essence in relation to these Terms.

These Terms and any agreement including them shall be governed by the laws of the State of Victoria and Alfasi and the Customer submit to the jurisdiction of the Courts of that State

