

CONDITIONS OF HIRE

1. Interpretation

In this Agreement, unless the context otherwise requires the following terms shall have the following meanings:-

The "Owner" is Maccaferri NZ Ltd.

The "Hirer" is the person entering into this Agreement and where that person enters into this Agreement on behalf of another entity the expression includes such entity.

"Commencement Date" means the date set out in Item 5.

"Hire Fee" means the fee set out in Item 3

"Payment Date" means the date set out in Item 5.

"Deposit" means the sum, if any set out in Item 6.

"Premises" means the premises as set out in Item 2

"Term" means the term set out in Item 4

"Equipment" means equipment belonging to the Owner, as noted in the schedule above and all accessories and other items accompanying the equipment.

2. Hiring of Equipment

2.1 Subject to this Agreement the Hirer agrees to hire the Equipment from the Commencement Date for the Term for the Hire Fee.

2.2 The Hire Fee shall commence from the date of collection of the Equipment or one day after the dispatch date and continue until return of the Equipment or one day prior to receipt of the Equipment into the Owners premises. The Hirer shall, at its own cost, maintain the Equipment to good working order and condition, subject always to Clause 6 of this Agreement.

3. Hire Rates and Payments

3.1 The Equipment is hired at the Hire Fee.

3.2 On the Payment Date, or such other date as may be agreed in writing by the parties, the Hirer shall pay to the Owner the Hire Fee.

3.3 The Hirer's obligation to pay the Hire Fee is absolute and unconditional under any and all circumstances whatsoever.

3.4 In the event that the Equipment is returned to the Owner having sustained damage (fair wear and tear excepted), the Owner shall be entitled at its option, to charge the Hirer the cost of any repairs to or maintenance of the Equipment which the Owner deems

necessary to restore the Equipment to good working order and Condition or in the event of damage beyond repair, to replace the Equipment at full replacement cost.

4. Deposit

4.1 When requested, immediately upon signing the Agreement, the Hirer shall pay to the Owner the deposit.

4.2 Upon return of the Equipment to the Owner without damage (fair wear and tear accepted) the deposit will be offset against the Hire Fee.

4.3 In the event the Equipment is returned to the Owner having sustained damage, the Owner shall be entitled to appropriate the deposit or part of to effect any repairs necessary to restore the Equipment to good working order.

5. Title

5.1 The Hirer acknowledges that from the Commencement Date the Equipment will be and will remain the sole property of the Owner and the Hirer shall only have a licence to use the Equipment.

5.2 The Hirer shall:

(a) allow the Owner to take all such steps (at the Hirer's expense) as may be necessary to safeguard and protect the title and rights of the Owner as the owner of the Equipment; and

(b) if requested by the Owner attach to the Equipment a notice to the effect that the Equipment is the property of the Owner.

5.3 The Owner may at any time without prior notice enter upon any premises where the Equipment is believed to be stored, to inspect, observe and/or test its use and to exercise any of its other rights arising under this Agreement.

6. Use and Maintenance

6.1 The Hirer shall:

(a) use the Equipment for the purpose for which it is designed and in accordance with any manufacturer's instructions;

(b) allow only appropriately qualified and experienced personnel to operate the Equipment;

(c) use the Equipment with proper accessories and in conditions suitable for the use of the Equipment;

(d) operate and maintain the Equipment in a proper and workman like manner and in accordance with all applicable laws, rules and regulations;

(e) keep the Equipment in the Hirer's possession and control at the Premises;

(f) at its own cost, maintain and keep the Equipment in good and substantial repair and on termination of this Agreement return the Equipment to the Owner in such repair;

(g) not make or authorise any repair, any disassembly, any part change, any replacement, alteration or addition to the Equipment without the prior written approval of the Owner;

(h) promptly inform the Owner of the location of the Equipment whenever requested by the Owner;

(i) not create any lien over the Equipment;

(j) notify the Owner immediately if there is any malfunction of the Equipment and immediately return the Equipment to the Owner; and

(k) store the Equipment in a secure place at the Premises.

7. Assignments and Mortgages

The Hirer shall not without the prior written consent of the Owner, sell, transfer, assign, create any interest in, sub-let, part with possession of or otherwise dispose of or encumber all or part of the Equipment or its interest in the Equipment either absolutely or by way of

security, or agree, offer, attempt or purport to do any such thing. The Owner may assign, mortgage, encumber, charge and deal in any way whatsoever with its interest in the Equipment subject to this Agreement.

8. Loss and Damage

Subject to the other provisions of this Agreement, all risk of theft, damage or destruction to the Equipment or any part thereof, however incurred or occasioned, shall be borne by the Hirer and the Hirer hereby indemnifies the Owner in respect of such theft, damage or destruction of the Equipment and the Hirer agrees to replace the Equipment at full replacement cost.

9. Assumption of Risk and General Indemnities.

9.1 The Hirer agrees to use, operate, maintain and possess the Equipment at the risk of the Hirer.

9.2 To the full extent permitted by law, the Hirer agrees to release, discharge and indemnify the Owner, its employees and agents, from and against all liabilities, expenses, claims and demands made against the Owner, its employees or agents, and for any loss or damage caused to the Hirer or any third party, whether by way of death of or personal injury to any person, damage to property, delay, or consequential loss or loss of profit arising from or incidental to:

- (a) the use, operation, repair, maintenance or storage of the Equipment or a breakdown of, or defect in, the Equipment or any accident involving the Equipment (whether caused by the negligence or otherwise);
- (b) any failure by the Hirer to observe or comply with any one or more of its obligations expressed in or implied by this Agreement.

9.3 The Hirer acknowledges and agrees that the Equipment is designed specifically for use on products sold by the Owner and the Owner shall not be liable for any loss arising from use of the Equipment on or in respect of goods not supplied by the Owner.

10. NOTE: EXCLUSION OF IMPLIED WARRANTIES UNDER THE COMMERCE AND FAIR TRADING LEGISLATION.

10.1 The commerce and the fair trading legislation imply certain terms and warranties into this Agreement. Some of those terms and warranties cannot be excluded or modified or can only be excluded or modified to a limited extent. Nothing in this Agreement is intended to exclude, restrict or modify any statutory obligation of the Owner if that cannot lawfully be effected under the relevant Act or legislation.

10.2 To the full extent permitted by law, the liability of the Owner is limited as set out below:

- (a) the liability of the Owner in relation to goods the Owner supplies is limited at its option to:
 - (i) replacement of the goods or the supply of equivalent goods;
 - (ii) repair of the goods; or
 - (iii) payment of the cost of replacing the goods or of acquiring equivalent goods; or payment of the cost of having the goods repaired;
- (b) the liability of the Owner in relation to services the Owner supplies is limited at its option to;

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.

11. Return and Repossession of the Equipment.

11.1 Upon the expiry or sooner termination of the hiring granted under this Agreement or of any renewal or extension of such hiring, the Hirer shall at its own expense return the Equipment to the Owner.

11.2 If the Hirer fails to return the Equipment:

(a) the Owner may, directly or by its agent, take possession of the Equipment and for that purpose the Owner, directly or by its servants or agents and with the authority of and as agents of the Hirer, may enter upon any land or premises where the Equipment is or is reasonably suspected of being. This permission is irrevocable and the Hirer agrees that the Owner, its' employees or agents, so entering are not trespassing.

(b) the Hirer must pay the Owner the Hire Fee on a daily basis until the Equipment is returned to or repossessed by the Owner.

12. Termination

12.1 The Owner may terminate this Agreement immediately where the Hirer commits a breach of this Agreement which is not capable of being remedied or, where the breach is capable of being remedied is not remedied within 2 days of the Owner notifying the Hirer of the breach.

12.2 On termination the Hirer shall pay to the Owner all moneys outstanding under this Agreement.

13. Warranties of the Hirer

13.1 The Hirer warrants that:

- (a) in deciding to enter into this Agreement the Hirer has relied on its' own skill and judgement and has not relied on any statements, representations or warranties made by the Owner;
- (b) the Hirer has selected and examined the Equipment and has satisfied itself as to its compliance with its description as well as its condition, suitability and fitness for the Hirer's purpose;
- (c) upon hiring the Equipment the Hirer has satisfied itself the Equipment is in good and substantial working order and condition and constitutes the Equipment the subject of this Agreement.
- (d) The details set out in page 1 and the schedule (where applicable) are correct in every respect and are not misleading in any way, including by omission.

14. Consumer Guarantees Act.

14.1 The parties agree that the Equipment is hired and used for the purposes of a business and accordingly the Consumer Guarantees Act 1993 shall not apply.

15. Notices

In addition to effecting notice pursuant to any statute any statement, demand or notice to any party may be validly served (notwithstanding that the demand or notice is returned to the party giving the notice for any reason) for the purpose of this Agreement by being sent by prepaid post to the address of the party or by facsimile to the number of the party in this Agreement. Service will be deemed to be valid service if made to the address or facsimile number of the party specified in this Agreement unless the recipient has notified the sender in writing of a change of address.

16. General

16.1 (Whole Agreement): The provisions contained in this Agreement and the Schedule cover and comprise the whole of the Agreement between the parties to this Agreement with respect to the hiring of the Equipment.

16.2 (No waiver): The rights of the Owner shall not be prejudiced or restricted by any indulgence or forbearance extended to the Hirer and no waiver by the Owner shall operate as a waiver of any subsequent breach.

16.3 (Costs and Expenses): Hirer must on demand pay to or reimburse the Owner for all costs, charges and expenses in connection with the contemplated enforcement, enforcement or preservation of any of the Owner's rights under this Agreement.

16.4 (Overdue interest): The Hirer shall pay interest on any moneys from time to time due and unpaid by the Hirer under this Agreement at the rate specified in Item 7 of the Equipment Hire Agreement, from the date when such moneys fall due for payment or are expended by the Owner.

16.5 (Severance): If any provision of this Agreement is found by a court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.

16.6 (Governing Law): This Agreement shall be governed by and construed in accordance with the laws New Zealand and the Hirer submits to the non-exclusive jurisdiction of its Courts.

16.6 (Variation): Any variation of this Agreement must be agreed in writing by the parties.