



## TERMS AND CONDITIONS OF CONTRACT FINLAY SCREENING & CRUSHING SYSTEMS PTY LTD

- 1. DEFINITION:** In these terms and conditions the expression "Finlay" means Finlay Screening & Crushing Systems Pty Ltd. The expression "the Purchaser" means the person, firm or company obtaining any goods or services from Finlay, and the expression "goods" includes all goods or material of every nature or kind supplied by Finlay or the subject of any transaction between Finlay and the Purchaser, "PPS Act" means the *Personal Property Security Act 2009* (Cth) and its regulations and "security interest" has the same meaning as in section 12 of the PPS Act.
- 2. APPLICATION:** Every offer, quotation, acceptance or contract for the sale or supply of goods (including services ancillary thereto) by Finlay is subject to these conditions and all other terms and conditions proposed by the Purchaser which would conflict with, qualify or negate any of these terms and conditions are expressly excluded. No variation of or amendment to these conditions shall be valid unless agreed by an authorised officer of Finlay in writing.
- 3. ACCEPTANCE:** All quotations given are subject to confirmation by Finlay in writing upon receipt of the purchaser's order and no contract shall be concluded unless such confirmation is given. Quotations are valid for a period of 30 days only from the date on which the quotation is provided.
- 4. SPECIFICATIONS AND DRAWINGS:** Unless specifically guaranteed in writing by Finlay to the Purchaser, Finlay gives no warranties that the content of any drawings, catalogues, shipping specifications or other similar documents ("ancillary documents") reflect the actual specifications of the Goods. The ancillary documents are provided for information purposes only and Finlay reserves the right to make changes to the ancillary documents at its discretion. Finlay is not under any duty to take account of the Purchaser's specific requirements for the use of the goods.
- 5. PRICES:** The prices quoted or agreed by Finlay are nett ex-works at the date of quotation, and are exclusive of tax, port rates, transportation, insurance, customs duties, licence fees or other charges. They are based upon the cost of goods or materials, labour, transport and maintenance of machinery, valid as at the date on which the price is quoted or agreed. The price may be varied at any time before a delivery of the goods to cover any increased cost to Finlay. All goods will be invoiced and payment will become due at the prices ruling as published or operated by Finlay at the date of delivery. Unless otherwise expressed or agreed, Finlay's quoted prices cover only the supply of goods from its normal stock or production. In any case where a Purchaser requires some different or special goods an extra charge may be made to cover any additional cost.
- 6. TERMS OF PAYMENT:** (a) where goods are for delivery in Australia, the time for payment shall be stated on the face of the invoice nett cash (Australian dollars). Finlay shall be entitled to charge interest at 11% per annum on all payments outstanding after due date (which the Purchaser acknowledges to be a genuine pre-estimate of the loss that it will suffer as a result of late payment). (b) Where goods are for delivery outside Australia payment shall be made by irrevocable letter of-credit confirmed by an Australian Bank approved by Finlay against the usual shipping documents. (c) Without prejudice to any of Finlay's other rights under these terms and conditions, if any amount is not paid in accordance with these terms and conditions, Finlay may either suspend all further deliveries of any goods until payment is made in full or cancel any existing orders where the relevant goods have not been delivered.
- 7. TITLE AND RISK** (a) The goods will be at the Purchaser's risk from the date the goods leave Finlay's warehouse. In the event that goods are lost or destroyed, the proceeds of any insurance policy held by the Purchaser in respect of any such loss or damage will be deemed to be held by the Purchaser on trust for Finlay until such time as Finlay receives payment in full for the goods. (b) Despite delivery, title in the goods will not pass from Finlay until the Purchaser has paid the price for the goods in full; and (i) no other amounts whatsoever are due to be paid by the Purchaser to Finlay; or (ii) the Purchaser sells the goods to a customer of the Purchaser in the ordinary course of the Purchaser's business. (c) Where the goods are sold by the Purchaser in accordance with clause 7.2(b)(ii), the sale price for those goods, or so much of it as represents the amount payable to Finlay in accordance with these terms and conditions, will be held on trust by the Purchaser for Finlay absolutely until such time as that amount is paid to Finlay. (d) Until title in the goods passes to the Purchaser in accordance with this clause 7, the Purchaser will hold the goods and each of them as bailee for Finlay and the Purchaser will store the goods at no cost to Finlay separately from all other goods in its possession in such a way that they are clearly identifiable as Finlay's property. (e) Until title in the goods passes from Finlay in accordance with this clause 7, the Purchaser will upon request made by or on behalf of Finlay deliver up the goods to Finlay. If the Purchaser fails to do so, Finlay may enter upon any premises owned, occupied or controlled by the Purchaser where the goods are situated (without liability for trespass or any resulting damage) and retake possession of the goods and Finlay may keep or resell those repossessed goods.
- 8. INSPECTION AND TESTING:** Inspection and testing of the goods will be allowed at Finlay's premises before delivery or by agreement with Finlay and an extra charge may be made. If any inspection or testing is so agreed Finlay shall give the Purchaser reasonable notice to attend or be represented at any such test.
- 9. DELIVERY:** (i) Delivery shall be ex-works Finlay, and in the event that the Purchaser fails to remove the goods or (if Finlay has agreed to arrange delivery) fails to accept the goods promptly when requested, Finlay shall be entitled (but not bound) to store the goods at the Purchaser's risk and may 30 days after giving written notice to the last known address of the Purchaser,



dispose of the goods. The Purchaser shall be liable to Finlay for all expenses and/or losses incurred by Finlay, by reason of the Purchaser's failure to remove the goods or otherwise take delivery.

**(ii)** As stated in Clause 5, Finlay's prices and quotations do not include delivery, unless such prices or quotations specifically state in writing that delivery costs are included. Finlay will at the Purchaser's request, quote prices inclusive of delivery charges, subject to the following terms and conditions:

**(a)** Delivery costs only cover delivery on normal working days during normal working hours. All deliveries made at the Purchaser's request on Public Holidays, Sundays or Saturday Afternoons or at any other time outside normal working hours will be subject to an extra charge.

**(b)** Subject to sub-clause (c), delivery will be to the nearest accessible point of the Purchaser's site or depot. Included in the delivery cost is work associated with unloading or loading (as the case may be), provided that there will be no unreasonable delay (in respect of which, Finlay reserves the right to charge extra).

**(c)** Finlay does not undertake to collect or deliver any load over roads or other ground which, in the opinion of Finlay, is unsuitable for Finlay's or its agent's vehicles. If such a vehicle delivers or collects a load to or from a place situated off the public road, Finlay shall not be responsible in any circumstance for any direct, indirect or consequential loss or damage whatsoever, howsoever arising out of such delivery other than by liability for death or personal injury resulting from the negligence of Finlay.

**(d)** The Purchaser must notify Finlay and the outside carrier in respect of all claims for damage to the goods in transit, loss or errors in delivery or errors in despatch or invoicing. The notification must occur within the earlier of 7 days or the time limit imposed by the outside carrier. Unless Finlay and the outside carrier are notified in accordance with this clause 9, the goods will be deemed to have been delivered in accordance with the contract and in perfect order and condition, and the Purchaser will be deemed to have accepted the goods accordingly.

**(e)** Unless specifically agreed otherwise, all packing is charged by Finlay to the Purchaser and is non-refundable. In the event of Finlay agreeing to accept return of any packing, such return must be made within two months from the date of despatch by Finlay failing which the Purchaser shall become liable to pay the cost of the packaging.

**(f)** All payments in respect of delivery shall be subject to the terms of payment set out in clause 6.

**10. DELAY OR FAILURE TO SUPPLY OR DELIVER:** Delivery dates may be quoted by Finlay and arrangements for delivery made in accordance with Clause 9. Such dates and arrangements shall be interpreted as estimated only. Without prejudice to the above Finlay shall not be liable for failure to supply or for delay in supplying any goods or loss or damage resulting directly or indirectly from such failure, due to any Act of God, Force Majeure, or any War, Invasion, Riot, Civil Commotion, Criminal Damage, Military or Usurped Power, and Legislation, Government Order, Regulation or direction, Fire, Strike or lock-out or other Labour difficulties affecting Finlay's own plants or those of Finlay's suppliers or deliveries to or from Finlay, or any accident or breakdown of machinery or shortage of labour equipment or spare parts affecting the production or transit of such materials or goods, or from any other cause whatsoever beyond Finlay's control, or any abnormal conditions arising from any of the aforesaid causes.

In the event of any delay due to any such cause the date of delivery or time for completion will be adjusted to reflect the actual length of time as may be necessary to properly reflect the delay. Under no circumstances will Finlay be under any liability to the Purchaser in respect of delay.

**11. CONDITIONS AND WARRANTIES:** **(a)** Any conditions, warranties, guarantees, or other obligations whatsoever, either express or implied by common law, custom of the trade, course of dealing or otherwise as to any matter will, to the maximum extent permitted by law, be excluded. **(b)** Where any goods have been specially manufactured, processed, altered or adapted to the special order or requirements of the Purchaser Finlay does not warrant that they are fit for any particular purpose.

**12. Consumer Law:** The Purchaser should be aware that certain legislation including Schedule 2 of the Competition and Consumer Act 2010 ("Consumer Law") has the effect of granting certain rights which cannot be excluded restricted or modified or if they can be restricted or modified such restrictions and modifications may be of a limited nature only. Subject to the qualifications contained in section 64A of the Consumer Law, should Finlay be liable for any breach of a condition, warranty or guarantee implied by Part 3-2 Division 1 of the Consumer Law, to the maximum extent permitted by law, Finlay's liability for such breach shall be limited to:

**(a)** in the case of goods, any one of the following as determined by Finlay:

- (i)** the replacement of the goods or the supply of equivalent goods; or
- (ii)** the repair of the goods; or
- (iii)** the payment of the cost of replacing the goods or acquiring equivalent goods; or
- (iv)** the payment of the cost of having the goods repaired; and

**(b)** in the case of services, any one of the following as determined by Finlay:

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

**13. MANUFACTURERS GUARANTEES:** Where any goods supplied by Finlay are not manufactured by Finlay and are the subject of manufacturers terms, guarantees or warranties ("**Third Party Warranties**"), Finlay will use reasonable endeavours to secure for the Purchaser the benefit of the Third Party Warranties and Finlay's obligations shall not extend any further under any circumstances. In this respect the Purchaser is deemed to have made him/herself familiar with and be satisfied with the



Third Party Warranties provided by the relevant manufacturer. To the maximum extent permitted by law, Finlay shall be under no liability for defects in goods not manufactured by Finlay save to the extent that Finlay is entitled to recover any loss or damage under the Third Party Warranties.

**14. EXCLUSION OF LIABILITY:** (a) Without prejudice to clause 12 any liability of Finlay for any breach of contract whatsoever including liability in respect of any defect in the goods arising or quality condition or description of the goods whether from defect of manufacture or otherwise shall be limited to the sum equal to the price of the defective goods or free replacement of any materials or goods, provided Finlay is notified within 48 hours of delivery.

(b) Finlay shall not be under any liability for the negligence of the company, its employees, servants, agents, subcontractor or others except liability for death or personal injury resulting from negligence.

(c) Finlay shall not be responsible in any circumstances for any direct, indirect or consequential loss or damage whatsoever whether suffered by the Purchaser or any third party and howsoever arising out of the installation or use of goods supplied or work done by Finlay or from any defects in the same or otherwise arising from any contract with Finlay including (without limitation) failure in the performance or the functioning of any equipment or system to which the goods are connected or of which they form part, loss of profit, wastage of goods, loss of machine time or production or wastage of labour.

(d) To the maximum extent permitted by law, no further provisions will be deemed to be implied into these terms and conditions or will arise by reason of any promise, representation, warranty or undertaking given or made by Finlay. (e) Any provision which is deemed by statute to be incorporated into these terms and conditions, but the operation of which may be lawfully excluded, restricted or modified by agreement between Finlay and the Purchaser is, to the maximum extent permitted, so excluded, restricted or modified.

**15. SAFETY:** The Purchaser undertakes that it will comply and that it will procure that its employees and any other persons working with, on, or near or using any goods supplied by Finlay will comply in full with the instructions and recommendations made in the relevant Operating and Safe Working Hand Book and Service Manual provided by the Manufacturer with such goods, and/or that they will comply with all other instructions whether written or verbal given by Finlay or Manufacturer in connection with the safe use, maintenance and/or operation of the goods.

**16. CANCELLATION:** No contract for goods ordered, obtained or manufactured by Finlay may be cancelled, and no goods may be returned without the prior written consent of Finlay, which consent may be withheld at Finlay's absolute discretion.

**17. INSOLVENCY OR DEFAULT:** (a) If Finlay receives information from which it appears that the Purchaser may be unable to pay its debts Finlay shall (without prejudice to any other rights, hereunder) be entitled to demand security prior to delivery either by payment in cash or bank guarantee notwithstanding any other terms of payment previously agreed, and in the event that the Purchaser is unable to provide such security Finlay shall be entitled to withdraw from the contract without liability.

(b) If the Purchaser defaults on any payment, commits a breach of a contract, or of any other of its obligations to Finlay or if any execution shall be levied upon the Purchaser's property or assets, or if the Purchaser shall make or offer any arrangement or composition with its creditors or commit any act of bankruptcy or any petition or receiving order shall be presented or made against it, or if any resolution or petition to wind up the Purchaser's business shall be passed or presented or if a Receiver or Manager of the undertaking property or assets or any part thereof the Purchaser shall be appointed, then Finlay may without notice:

(i) Suspend or determine the contract or any unfulfilled part thereof without prejudice to its existing rights under these terms and conditions;

(ii) Stop any goods in transit; and

(iii) Recover from the Purchaser's premises any goods which are the property of Finlay.

(c) The Purchaser agrees to indemnify and keep indemnified Finlay against all claims, actions, demands, losses and damages which Finlay may suffer as a result of a breach of these terms and conditions by the Purchaser.

(d) If the Purchaser breaches these terms and conditions, Finlay may take whatever action against the Purchaser it considers appropriate to recover any direct, indirect or consequential loss, damages or expenses that Finlay has incurred or suffered as a result of that breach.

**18.** Finlay may assign the benefit of these terms and conditions without the consent of the Purchaser. The Purchaser must not assign the benefit of these terms and conditions without Finlay's prior written consent.

**19. INTERPRETATION:** (a) These terms and conditions are considered to be fair and reasonable having regard to the circumstances known to and in the contemplation of the parties at the date hereof, and shall apply insofar as they shall be held to be lawful and enforceable. But it is hereby agreed that if any of such term and conditions shall be adjudged to be void, but would be valid if any part of the wording thereof were deleted the said term or condition shall be read with such modification as may be necessary to make it valid and effective.

**20. INDEMNITY:** (a) The Purchaser will indemnify Finlay against all claims of whatsoever kind and from whomsoever arising from death or personal injury arising out of use of the goods by any person.

(b) The Purchaser will indemnify Finlay against all claims of whatsoever kind and from whomsoever arising for damage to property arising out of any use of goods by any person.

**21. PPS Act:** These terms and conditions constitute a security agreement for the purposes of the PPS Act and create a Security Interest in all goods previously supplied by Finlay to the Purchaser and all future goods supplied by Finlay to the Purchaser.

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Any goods supplied by Finlay under these terms and conditions constitute a Purchase Money Security Interest (PMSI). The PMSI will continue for any goods coming into existence or for the Proceeds from the sale of goods coming into existence. If Finlay holds any Security Interest in the goods (including a PMSI), the Purchaser agrees to implement, maintain and comply in all material respects with procedures for the perfection of those Security Interests.

The Purchaser must take all steps under the PPS Act to continuously perfect any such Security Interest, including all steps necessary for Finlay to obtain the highest ranking priority possible in respect of those Security Interests and to reduce as far as possible the risk of a third party acquiring an interest free of Finlay's Security Interests.

The Purchaser waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any Security Interest under these terms and conditions.

Everything which the Purchaser is required to do under this clause 21 is to be done at the expense of the Purchaser and the Purchaser agrees to reimburse Finlay for these costs including any expenses incurred by Finlay in registering or removing a financing statement or financing change statement on the PPS Register.

The Purchaser must immediately notify Finlay in writing of any change in the Purchaser's name or the goods in which Finlay holds any Security Interest.

Until title passes from Finlay to the Purchaser, the Purchaser will not or will not permit the lodgement of a financing change statement or Amendment Demand or the creation of a Security Interest in the goods without the consent of Finlay.

To the maximum extent permitted by the PPS Act, **(a)** Finlay does not have to give a notice to the Purchaser of any action Finlay takes in accordance with section 120(2) of the PPS Act **(b)** Finlay does not have to give a notice under section 130 of the PPS Act **(c)** Finlay does not have to give the details required under section 132(3)(d) of the PPS Act **(d)** Finlay does not have to give a written statement of account under section 132(4) of the PPS Act **(e)** Finlay does not have to give a notice required under section 135 of the PPS Act **(f)** no person can redeem the Security Interest in the goods under section 142 of the PPS Act without Finlay's consent and **(g)** no person may reinstate the security agreement under section 143 of the PPS Act without Finlay's consent.

For the purposes of section 275(6) of the PPS Act, the Purchaser must keep confidential any information relating to these terms and conditions which is in the nature of information which an interested person could access under section 275(1) of the PPS Act.

In this clause 21, the following words have the following meanings:

"Amendment Demand" means a demand that a registration of a Security Interest be amended in accordance with the PPS Act.

"Proceeds" has the same meaning as section 31 of the PPS Act.

"PPS Act" means the Personal Property Security Act 2009 (Cth) and its regulations.

"PPS Register" has the same meaning as 'register' under the PPS Act.

"Purchase Money Security Interest" has the meaning given to it in section 14 of the PPS Act.

"Security Interest" includes a Security Interest within the meaning of section 12 of the PPS Act and/or a Purchase Money Security Interest as the context requires.

**22. JURISDICTION:** These terms and conditions are to be subject to and construed in accordance with the law of Queensland and are subject to the exclusive jurisdiction of the Courts of Queensland.

**23. ENTIRE AGREEMENT:** These terms and conditions constitute the entire agreement between the parties and any prior arrangements, agreements, representations or undertakings are superseded.

**24. AMENDMENTS TO BE IN WRITING:** No amendment to these terms and conditions has any force unless it is in writing and signed by all of the parties



## **TERMS & CONDITIONS OF RENTAL AGREEMENT**

**1. COMMENCEMENT:** Hirer requests Finlay Screening & Crushing Systems Pty Ltd ("**Finlay**") to deliver the goods to the Hirer, on the basis of this Rental Agreement. Hirer shall arrange for delivery of the goods so that they can be accepted by Hirer as provided within 90 days after the date on which Finlay signs this Rental Agreement on behalf of Finlay. Finlay becomes bound at the date of such signing, being called the "commitment date". Hirer shall upon delivery be deemed to have:

- (i) accepted receipt of the goods in good condition and repair;
- (ii) accepted the quality and condition of the goods and their suitability for Hirer's purposes as satisfactory in all respects for the purpose of this Rental Agreement.

Hirer authorises Finlay either before or after the signing on behalf of Finlay of this Rental Agreement:

- (i) to insert the commitment date in the Schedule;
- (ii) to insert in the serial numbers and other identification data of the goods in the Schedule, when determined by Finlay;
- (iii) to insert in the Schedule the rental payments commencement date;
- (iv) to insert in the Schedule the rental payment.

**2. TERM:** The term of this Rental Agreement commences upon the rental payment commencement date or on such later date as Finlay in its absolute discretion shall determine. The term ends upon the expiration of the number of months (referred to in the Schedule) after the rental payment commencement date.

**3. CREDIT INFORMATION:** Hirer represents and warrants that all credit and financial information submitted to Finlay is true and correct and the Hirer acknowledges that Finlay has relied on the truth and accuracy of that information in entering into this Rental Agreement.

**4. ACCEPTANCE BY FINLAY:** This instrument shall not be binding upon Finlay and the hire of goods shall not commence until this Rental Agreement has been signed on behalf of Finlay. The signing on behalf of Finlay by its authorised officer of this Rental Agreement shall of itself and without notice constitute a binding contract governed by the law of the State of Queensland. Finlay is not required to provide Hirer with a copy of the Rental Agreement signed by it. No prior act of Finlay or the delivery of the goods or any part of the goods to Hirer or any prepayment of rental payments shall be deemed an acceptance by Finlay and shall be deemed merely provisional, but in the event of such provisional delivery, Hirer's obligation as to insurance, care and the use of the goods and otherwise (except as to payments or rental payments) shall bind Hirer but Hirer shall be a tenant at will of the goods at a daily rental payment equal to 1/30th of the first monthly rental payment specified in the schedule, which rental payment, in the event of the signing of the instrument by an authorised officer of Finlay, shall be applied by Finlay in reduction of the rental payment provided by the schedule. If Finlay acquires the goods prior to the commitment date they shall be the absolute property of Finlay and Finlay shall be under no obligation to hire them to Hirer and until the signing of this agreement on behalf of Finlay, Finlay shall have a complete discretion as to whether to accept this offer or not. On acceptance of the Rental Agreement by Finlay, the Rental Agreement shall be deemed to have commenced as from the rental payment commencement date.

**5. NON-CANCELLABLE RENTAL AGREEMENT:** This Rental Agreement cannot be cancelled or terminated except in accordance with clause 18.

**6. LATE RENTAL PAYMENT:** Hirer agrees to pay interest at the rate of 11 percent per annum on such amounts of rental as from time to time remain due and unpaid on the date specified for payment in the Schedule and on any other monies payable under this Rental Agreement which from time to time may be due and unpaid. The Hirer acknowledges that the interest charged under this clause 6 is a genuine pre-estimate of the loss the Hirer will suffer in respect of the Hirer's late payment.

**7. RENTAL PAYMENTS:** Hirer shall pay the rental payments shown in the Schedule, the first of which shall be due on the rental commencement date and subsequent payment shall be due on the same day of each month (or other calendar period indicated in the Schedule) thereafter. Rental payments shall be due whether or not Hirer has received any notice that such payments are due. All rental payments shall be paid to Finlay at its address set out in the schedule or as otherwise directed by Finlay in writing. The Hirer must also pay the Additional Charges specified in the Schedule on the payment dates directed by Finlay.

**8. RENEWAL:** (a) Unless within 30 days prior to the expiration of this Rental Agreement, Finlay has agreed in writing to extend the term, the Hirer shall at the expiry of the term, return the goods to Finlay at such place or on board such carrier packed for shipping as Finlay may specify at the cost and expense of Hirer. (b) Unless otherwise agreed in writing, any extension shall be at the rental and upon the terms contained in this Rental Agreement and such extension shall continue until determined by either party giving one month's notice in writing to the other party.



**9. REPAIRS, USE, ALTERATIONS:** Hirer, at its own costs and expense, shall keep equipment in good repair, condition and working order, shall use equipment lawfully, and shall not alter equipment without Finlay's prior written consent. If the goods are mobile, Hirer shall not remove the goods from the address nominated by the Hirer under this clause except for use in Hirer's business within the State or Territory in which the Hirer's business is located. Hirer shall use the care of a cautious and prudent owner to prevent damage to or deterioration of the goods or their loss or destruction including but not limited to:-

- (i) using or permitting use of the goods (in the case of goods requiring licensed personnel) only by properly qualified licensed personnel;
- (ii) using, keeping and servicing and permitting use, keeping and servicing of the goods only in accordance with the manufacturer's instructions in the manufacturer's service manual (if any);
- (iii) arranging for inspection and servicing of the goods at Hirer's expense both as to materials and labour at such periods (if any) as are recommended by the manufacturer of the goods; and
- (iv) using the goods or permitting them to be used only in accordance with the normal usage of such goods having regard to the general purpose for which the goods were designed and manufactured and not to use or permit the goods to be used or operated in violation of the terms of this Rental Agreement or for any illegal purpose or under any circumstances which would amount to a breach of any statute ordinance rule by-law or regulation or other law (whether such breach is committed by Hirer or otherwise) or which in Finlay's opinion would be likely to endanger the safety or condition of the goods or any part of the goods.

**10. SITE PREPARATION:** The Hirer shall at its expense ensure that prior to the delivery of any goods the site is prepared so as to satisfy the electrical, environmental and any special physical requirements required for the goods as specified by the supplier.

**11. INSURANCE:** Hirer shall provide, maintain and pay for (a) insurance against the loss or theft of or damage to the goods for the full replacement value of the goods with Finlay noted as the beneficiary under the policy so that any insurance proceeds are payable to Finlay, and (b) public liability and property damage insurance naming Finlay as an additional insured. All insurance shall be in form and amount and with insurers satisfactory to Finlay and shall contain the insurer's agreement to give 30 days written notice to Finlay before cancellation or material change of any policy of insurance. Upon Finlay's request, Hirer shall deliver the policies or copies of the policies or certificates of insurance to Finlay. Finlay is irrevocably authorised to appropriate any insurance or other money received by it in respect of loss of or damage to the goods or any of them towards any debt or liability whether present or future of Hirer to Finlay and to appropriate any monies paid by Hirer to any debt or liability arising under this Rental Agreement and to appropriate in Finlay's discretion any monies received from the insurance in respect of such damage to repair the goods and/or replace the goods and Hirer shall pay to Finlay the amount of any excess imposed by the insurer and payable by the Hirer which amount Finlay may in its discretion similarly expend.

**12. LOSS OR DAMAGE:** Hirer shall bear the entire risk of loss, theft, destruction, or damage of the goods or any item of the goods from any cause whatsoever on or after the rental payment commencement date. No loss or damage shall relieve Hirer of the obligation to pay rental payments or any obligation under this Rental Agreement in the event of loss or damage. Hirer, at the option of Finlay shall: (a) restore the goods to good condition and repair; or (b) replace the goods with the like equipment in good condition and repair with clear title in Finlay; or (c) pay to Finlay the total of the following amount: (i) such amount as is determined by Finlay having regard to the replacement cost (including purchase price, freight, customs exercise, supply and all duty however calculated) of a new machine delivered to the office of Finlay less such an amount for depreciation as is reasonable in the circumstances and: (ii) all of the hire charges due under this Rental Agreement from the date of the event to the date of the delivery of the goods. Upon Finlay receiving such payment, Finlay will transfer ownership of the said item, for salvage purposes, in its then condition and location, as is without warranty express or implied.

**13. SURRENDER:** Upon the expiration or termination of this Rental Agreement or any extension the Hirer shall make or cause to be made such repairs in relation to the goods as may be necessary to ensure that the goods are returned to Finlay in original condition (reasonable wear and tear resulting from the proper use excepted). If the Hirer fails to perform its obligations under this clause Finlay may make or cause to be made such repairs to the goods as Finlay shall consider necessary and the Hirer shall pay to Finlay on demand the cost of such repairs.

**14. CUSTODY OF THE GOODS:** (a) The Hirer acknowledges that: (i) Finlay retains title to the goods; and (ii) the Hirer is a bailee of the goods and nothing contained in this Rental Agreement confers on the Hirer any title or interest in or to the goods, other than as bailee of Finlay. The Hirer must not sell or offer for sale, assign, part with possession, or re-hire, mortgage, pledge or otherwise deal with the goods or any part of the goods in a manner contrary to Finlay's ownership interest without Finlay's written consent. (b) At all times, the Hirer must: (i) protect Finlay's interest in the goods, including by making it clear to others that Finlay owns the goods, (ii) not part with possession of the goods without Finlay's consent. (iii) not give another person an interest in any form of security over the goods, or authorise anyone else to do so, and (iv) not place or allow to be placed, any plates or marks on the goods which are inconsistent with Finlay's ownership interest. (c) Finlay may at any time affix identifying plates or marks on or to the goods and shall at all reasonable times have access to the goods for the purpose of affixing such plates or mark and keeping the same in repair. (d) The Hirer must allow Finlay or its authorised representatives reasonable access to inspect the goods at any reasonable time of day and to enter any premises where Finlay or its authorized representatives believe the goods may be located for the purpose of inspecting or testing them or retaking possession pursuant to Finlay's powers contained in this Rental Agreement. If, after the expiry of the term, Finlay discovers that the goods have



been damaged in any way, a certificate by an assessor appointed by Finlay as its agent as to the nature and cost of any repair required shall be prima facie evidence that the goods were damaged. (d) Hirer shall comply with all requirements at law relating to the goods, their possession and use and the premises upon which they are situate and the occupation and use of such premises. (e) Hirer shall pay all duties imposed by law (to be varied pro-rata according to any future changes in the rate of duties) in connection with the registration, stamping or otherwise of this Rental Agreement and punctually pay all rents, rates, taxes, charges and impositions payable in respect of the premises at which the goods are located and produce receipts for such payments to Finlay on demand and protect the goods and any of them from distress, execution or seizure and indemnify Finlay against all losses costs charges and expenses incurred by it in respect of any such action. (f) If the goods are a motor vehicle, the Hirer shall keep the goods housed generally at Hirer's address above and not remove them except for the purpose of the Hirer's business within the State of such address and shall not remove or permit the goods to be removed outside such State without Finlay's prior consent which shall not be unreasonably withheld if the goods are only periodically driven out of and returned to such State. (g) If the goods are not a motor vehicle Hirer shall not without Finlay's consent in writing remove the goods from the place of installation. (h) If stamp duty payable by Finlay in respect of this Rental Agreement (if any) is at any time altered then the rental payments shall notwithstanding any other provision of this Rental Agreement be increased or reduced by the amount of the increase or reduction in the stamp duty payable by Finlay.

**15. INDEMNITY:** Hirer shall indemnify Finlay against any claims or costs whatsoever arising after delivery of the goods to Hirer out of the use operation or keeping of the goods or in any matter relating to the goods. Hirer shall release and discharge Finlay from any loss or damage whatsoever caused to Hirer whether by way of personal injury, delay, financial loss or otherwise arising from or incidental to a breakdown or defect in or any accident in respect of the goods (whether occasioned by the negligence of Finlay, its servants and agents or otherwise) and hereby indemnifies Finlay against and from liability in respect of all actions, proceedings, claims and demands by any third party arising from or incidental to a breakdown or defect of or any accident to the goods.

**16. PERSONAL PROPERTY:** The goods shall at all times be and remain personal property notwithstanding that they or any part are affixed to real property or any improvements thereon and Hirer shall not affix the goods or any part of the goods to realty otherwise than as agreed by Finlay temporarily and for the more convenient use of the goods. Hirer at Hirer's own cost and expense shall do all things including obtaining waivers by other persons as Finlay considers necessary from time to time to ensure that no person acquires any interest in the goods as a fixture or otherwise and that any such interest shall be terminated. Hirer represents and warrants that Hirer is not and will not be a party to any other Rental Agreement or any mortgage or other transaction affecting the goods without the consent of Finlay and on such terms as Finlay may specify to protect its interest in the goods.

**17. DEFAULT:** If Hirer repudiates this Rental Agreement or refuses to be bound or further bound thereby or if any of the following events occur, Finlay may by notice in writing immediately terminate this Rental Agreement: (a) Failure by Hirer to pay any installments of rental payments or any other monies payable under this Rental Agreement. (b) Failure by Hirer to rectify any breach of the terms, conditions, provisions and obligations under this Rental Agreement within seven days of notice from Finlay requiring payment or rectification. (c) The death of Hirer or the appointment of an administrator. (d) Hirer going into liquidation or appointment of a receiver or a receiver and manager of a resolution to wind it up being passed or proposed or a ground arising upon which a Court may order the winding up of Hirer. (e) The levying of execution or distress against Hirer or his goods. (f) Any insurance proposals made by Hirer in respect of the goods being declined or any such insurance being cancelled. (g) Hirer doing or permitting any act or thing likely to endanger the safety or condition of the goods. (h) The discovery by Finlay that Hirer has made any materially false statement in or in relation to the making of this Rental Agreement. (i) If the Hirer is a natural person, conviction of the Hirer of an indictable offence or a sentence to imprisonment of Hirer.

**18. TERMINATION:** (a) Upon termination of this Rental Agreement under clause 17, the Hirer must immediately deliver the goods to Finlay at such place as Finlay may specify in original condition (reasonable wear and tear resulting from the proper use of the goods excepted). If Hirer does not return the goods, Finlay may take possession of the goods and for that purpose may enter in and upon any premises in which the goods are for the time being kept or located.

**19. OWNERSHIP:** The goods shall at all times remain the property of Finlay and Hirer acknowledges that no option, promise or representation expressed or implied written or oral has been made by or on behalf of Finlay to Hirer that the goods may be purchased from Finlay by Hirer or any nominee of Hirer at any time during the term of this Rental Agreement or upon or after expiry the term. Hirer shall have no right, title or interest in respect of the goods except as expressly provided in this Rental Agreement.

**20. LIABILITIES, INDEMNITY ETC.:** To the full extent permitted by law and subject to the rights referred to in clause 21 which cannot be excluded, restricted or modified;

(a) representations and agreements not expressly contained herein or incorporated herein by reference shall not be binding upon Finlay as conditions, warranties or otherwise;

(b) all conditions, warranties and representations on the part of Finlay whether express or implied, statutory or otherwise are expressly negated and excluded;

(c) this Rental Agreement (and all schedules and appendices incorporated herein by reference) constitutes the whole of the agreement and understanding between the parties with respect to the subject matter and all additions and modifications to this Rental Agreement shall be in writing and shall be signed by both parties;



(d) Finlay shall be under no liability to Hirer or any other person for and Hirer releases and discharges Finlay from any loss or damage (including but not limited to loss of profit, direct, indirect or consequential loss or damage to persons or property or otherwise) or death or injury caused by or arising out of or relating in any manner or incidental to the goods their condition, performance, use, operations, keeping, supply, non-supply, performance or non-performance or any defect or defects in or breakdown of or accident to the goods or any item of the goods or any thing or any service provided for or contemplated by or in or pursuant to this Rental Agreement (including negligent acts or omissions of Finlay or its servants or agents or otherwise); (e) Hirer hereby agrees to indemnify Finlay against and from all liability in respect of all and any actions proceedings demands and claims against Finlay by any third party in respect of any such loss, damage, death or injury.

**21. Consumer Law:** Hirer should be aware that certain legislation including Schedule 2 of the Competition and Consumer Act 2010 ("Consumer Law") has the effect of granting certain rights which cannot be excluded restricted or modified or if they can be restricted or modified such restrictions and modifications may be of a limited nature only. Subject to the qualifications contained in section 64A of the Consumer Law should Finlay be liable for any breach of a condition, warranty or guarantee implied by Part 3-2 Division 1 of the Consumer Law, to the maximum extent permitted by law, Finlay's liability for such breach shall be limited to:

(a) in the case of goods, any one of the following as determined by Finlay:

- (i) the replacement of the goods or the supply of equivalent goods; or
- (ii) the repair of the goods; or
- (iii) the payment of the cost of replacing the goods or acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired; and

(b) in the case of services, any one of the following as determined by Finlay:

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

**22. FITNESS FOR PURPOSE:** Should Hirer have either expressly or by indication made known to Finlay or to the person by whom any antecedent negotiations were conducted any particular purpose for which the goods are being acquired then Hirer acknowledges that it has not relied nor would it have been reasonable for it to have relied on the skill or judgement of Finlay when deciding whether the goods were reasonably fit for that purpose.

**23. SUPPLIERS WARRANTY:** Hirer acknowledges that it has received a copy of the express warranty given by the supplier to Finlay. Finlay, with the consent of the supplier, will assign to the Hirer the benefit of the warranty and agrees that it will, if requested by Hirer, do all things reasonably required to assist enforcement by Hirer of the warranty. Hirer shall be responsible for making claims on the warranty and shall have no claim against Finlay arising out of any default by the supplier in fulfilling the terms of the warranty and acknowledges that Finlay has given no express warranty in respect of the goods.

**24. INDEMNITY:** (a) Hirer agrees to indemnify and keep indemnified Finlay against all claims, actions, demands, losses and damages which Finlay may suffer as a result of a breach of this Rental Agreement by Hirer.

(b) If Hirer breaches this Rental Agreement, Finlay may take whatever action against the Hirer it considers appropriate to recover any direct, indirect or consequential loss, damages or expenses that Finlay has incurred or suffered as a result of that breach.

**25. PPS Act:** This Rental Agreement constitutes a security agreement for the purposes of the PPS Act and creates a Security Interest in all goods previously supplied by Finlay to the Hirer and all future goods supplied by Finlay to the Hirer.

The Hirer confirms Finlay will have a Purchase Money Security Interest (**PMSI**) in any goods supplied under this Rental Agreement by way of Finlay's interest as lessor under a PPS Lease.

If Finlay holds any Security Interest in the goods (including a PMSI), the Hirer agrees to implement, maintain and comply in all material respects with procedures for the perfection of those Security Interests.

The Hirer must take all steps under the PPS Act to continuously perfect any such Security Interest, including all steps necessary for Finlay to obtain the highest ranking priority possible in respect of those Security Interests and to reduce as far as possible the risk of a third party acquiring an interest free of Finlay's Security Interests.

The Hirer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any Security Interest under this Rental Agreement.

Everything which the Hirer is required to do under this clause 25 is to be done at the expense of the Hirer and the Hirer will reimburse Finlay for these costs including any expenses incurred by Finlay in registering or removing a financing statement or financing change statement on the PPS Register.

The Hirer must immediately notify Finlay in writing of any change in the Hirer's name or the goods in which Finlay holds any Security Interest.

Until title passes from Finlay to the Hirer, the Hirer will not or will not permit the lodgement of a financing change statement or Amendment Demand or the creation of a Security Interest in the goods without the consent of Finlay.

To the maximum extent permitted by the PPS Act, (a) Finlay does not have to give a notice to the Hirer of any action Finlay takes in accordance with section 120(2) of the PPS Act (b) Finlay does not have to give a notice under section 130 of the PPS Act (c) Finlay does not have to give the details required under section 132(3)(d) of the PPS Act (d) Finlay does not have to give a written statement of account under section 132(4) of the PPS Act (e) Finlay does not have to give a notice required under section 135 of the PPS Act (f) no person can redeem the Security Interest in the goods under section 142 of the PPS Act

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without Finlay's consent and (g) no person may reinstate the security agreement under section 143 of the PPS Act without Finlay's consent.

For the purposes of section 275(6) of the PPS Act, the Hirer must keep confidential any information relating to these terms and conditions which is in the nature of information which an interested person could access under section 275(1) of the PPS Act.

In this clause 25, the following words have the following meanings:

"Amendment Demand" means a demand that a registration of a Security Interest be amended in accordance with the PPS Act.

"PPS Act" means the Personal Property Security Act 2009 (Cth) and its regulations.

"PPS Lease" has the meaning given to it in section 13 of the PPS Act.

"PPS Register" has the same meaning as 'register' under the PPS Act.

"Purchase Money Security Interest" has the meaning given to it in section 14 of the PPS Act.

"Security Interest" includes a Security Interest within the meaning of section 12 of the PPS Act and/or a Purchase Money Security Interest as the context requires.

**26. POWER OF ATTORNEY:** The Hirer irrevocably appoints Finlay (or an agent of Finlay) as its attorney to use its name and to act on its behalf: (a) in exercising any rights or instituting, carrying, enforcing, continuing, compromising or completing any legal proceedings which the attorney thinks fit and desirable to protect Finlay's rights under this Rental Agreement in relation to the goods and (b) to execute all documents and do all things and acts necessary to recover or compromise any claim for damage, loss or injury under an insurance policy in respect of the goods and to give a valid and effective receipt, discharge and rehire purchase in respect of such a claim.

**27. ASSIGNMENT:** Finlay may assign the benefit of this Rental Agreement without the consent of the Hirer. The Hirer must not assign the benefit of this Rental Agreement without Finlay's prior written consent.

**28. ENTIRE AGREEMENT:** This Rental Agreement constitutes the entire agreement between the parties and any prior arrangements, agreements, representations or undertakings are superseded. Any brochures or marketing material you may have seen are provided for your information only and do not form part of this Rental Agreement.

**29. AMENDMENTS TO BE IN WRITING:** No amendment to this Rental Agreement has any force unless it is in writing and signed by all of the parties.