

INTERPRETATION

1. In these Terms and Conditions, unless the context otherwise requires:
 - (a) **AESH** means Active Environmental Solutions (Hire) Pty Ltd ABN 77 102 010 140 or Alemir International Pty Ltd ABN 14 080 228 708 trading as Active Environmental Solutions;
 - (b) **Commencement Date** means the date specified in the Hire Agreement/Contract as the commencement date;
 - (c) **Customer** means the party who is specified as the Customer in the Hire Agreement/Contract and includes the party's transferees, successors and permitted assigns. Where the Customer is more than one person or entity, the liability of each such person or entity in relation to the Order is joint and several;
 - (d) **Delivery Fee** means the amount (if any) specified in the Hire Agreement/Contract as the delivery or transport fee;
 - (e) **Encumber** means an encumbrance or security interest including but not limited to a mortgage, fixed charge, floating charge, pledge, lien, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement or a subordination to a right of a person or an adverse or competing interest of another person or security interest (within the meaning of the *Personal Property Securities Act 2009* (Cth));
 - (f) **Equipment** means the equipment and other property listed in the Hire Agreement/Contract together with associated property including but not limited to all associated documents, manuals, tools, maintenance records, spare parts, accessories, software, consumable items and attachments hired and includes any replacement equipment which may be provided by AESH to the Customer from time to time;
 - (g) **GST** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) 1999* (Cth);
 - (h) **Hire Agreement/Contract** means the Rental Schedule to which these Terms and Conditions are attached or these Terms and Conditions accompany;
 - (i) **Order** means an order for Equipment and/or a request for AESH to supply Equipment to the Customer or nominee of the Customer (including but not limited to a purchase order);
 - (j) **Rental Period** means the period of rental of the Equipment specified in the Hire Agreement/Contract, subject to any extension under clause 13 or otherwise in accordance with these Terms and Conditions;
 - (k) **Rental Installment** means each installment of the total rental payable as specified in the Hire Agreement/Contract; and
 - (l) **Tax** means any kind of tax (except GST), duty, impost, charge, withholding, rate, levy or other governmental imposition of whatever nature and by whatever authority imposed (including stamp duty), assessed or charged, together with any cost, charge, interest, penalty, fine, expense or other additional statutory charge incidental or related to the imposition, but excludes tax levied on the net income of AESH.

USAGE OF TERMS AND CONDITIONS

2. These Terms and Conditions are incorporated into any contract or arrangement between AESH and the Customer for the supply of the Equipment to the Customer. They shall apply to the exclusion of all terms and conditions conflicting with or purporting to modify them whether issued before or after the date these Terms and Conditions come into effect (including but

not limited to any terms and conditions on any order form or request form produced by the Customer), except where otherwise agreed by and the Customer in a document signed by both parties.

3. **AESH** may at any time change these Terms and Conditions by publishing new terms and conditions, in which case the new terms and conditions will come into effect 14 days after they are published. The new terms and conditions will come into effect notwithstanding that the Customer does not receive notice of any change to these Terms and Conditions (including if the notice was accidentally omitted to be given).

ORDERS

4. Each Order constitutes an offer by the Customer to AESH and is subject to acceptance by AESH.
5. AESH may accept an Order by sending written notification to the Customer. Any Order accepted by AESH shall constitute a contract between the Customer and AESH.
6. The Customer shall not cancel an Order, or change the Commencement Date, without the written consent of AESH. In the event the Customer purports to cancel an Order, or change the Commencement Date, such attempt may, at AESH's election, be construed as a repudiation by the Customer of the contract between the parties, and the Customer shall pay to AESH all losses, damages, costs, interest, fees, charges (including handling charges) and expenses incurred or suffered by AESH and its suppliers (if any) as a result of the Customer's repudiation of the contract. The Customer shall have no recourse whatsoever against AESH as a result of any election made by AESH under this clause 6.
7. Without prejudice to AESH's rights under clause 6, in the event the Customer seeks to change the Commencement Date for any period longer than 14 days, and AESH agrees to accept the requested change in the Commencement Date, the Customer shall pay to AESH all losses, damages, costs, interest, fees, charges (including handling charges) and expenses incurred or suffered by AESH and its suppliers (if any) as a result of the delay.
8. An Order shall not be varied by the Customer unless the variation is in writing and accepted by AESH in writing.

RENTAL PERIOD

9. The period of rental of the Equipment will be the Rental Period, unless terminated earlier in accordance with these Terms and Conditions.
10. The Rental Period will commence on the earlier of the Commencement Date and the date on which the Customer takes delivery of the Equipment.

DELIVERY/COLLECTION OF THE EQUIPMENT

11. AESH will, if specified in the Hire Agreement/Contract, deliver the Equipment to the Customer on or by the Commencement Date. The Customer shall, if specified in the Hire Agreement/Contract or if the Hire Agreement/Contract does not specify that AESH will deliver the Equipment to the Customer, be responsible for collecting the Equipment from the address specified in the Hire Agreement/Contract on the Commencement Date.
12. On receipt of the Equipment, the Customer shall inspect the Equipment and must, within 24 hours of delivery, notify AESH of any alleged defect, shortage in quantity, damage or failure to comply with the Hire Agreement/Contract. If the Customer does not give such notice, the Equipment will be deemed to have been delivered and accepted by the Customer in good order, in the

correct quantity and otherwise in accordance with the Hire Agreement/Contract.

13. The Customer acknowledges that the Commencement Date is an estimate only and should **AESH** be unable to deliver the Equipment to the Customer on the Commencement Date (or make it available for collection on the Commencement Date) **AESH** shall have no liability to the Customer in relation to any loss, damage or expense caused by **AESH's** failure to do so and:
 - (a) **AESH** shall have no liability whatsoever to the Customer in relation to any loss, damage or expense incurred or suffered by the Customer as a result of **AESH's** failure to deliver the Equipment or make it available for collection by the Customer by the Commencement Date; and
 - (b) (at **AESH's** option) the Commencement Date shall be extended by any amount of time necessary for **AESH** to deliver the Equipment or make it available for collection by the Customer by the Commencement Date (and the Commencement Date shall be delayed accordingly); or
 - (c) (at **AESH's** option) **AESH** may cancel the agreement between **AESH** and the Customer for the rental of the Equipment and **AESH** will not be liable in any whatsoever to the Customer as a result of that cancellation (including without limitation being liable for any penalty, expense or claim by the Customer).
14. Where **AESH** engages an agent to deliver the Equipment, written confirmation from the agent that the Equipment has been delivered shall constitute proof that this has occurred.

PAYMENT

15. The Customer must pay all the Rental Installments to or at the direction of **AESH** during the Rental Period in accordance with these Terms and Conditions. Unless otherwise specified, all prices charged by **AESH** are inclusive of any GST.
16. Once paid, a Rental Installment is not refundable.
17. The first Rental Installment and the Delivery Fee is due when these Terms and Conditions (or the Hire Agreement/Contract) are signed by or on behalf of the Customer and given to **AESH**. All subsequent Rental Installments are payable in advance on each day specified in the Hire Agreement/Contract as a payment date.
18. If **AESH** requests the Customer to do so, the Customer must provide **AESH** with a direct debit authority or other automatic payment authority acceptable to **AESH** to facilitate the payment of amounts due by the Customer under these Terms and Conditions.
19. If the Customer fails to pay any amount to **AESH** when due under these Terms and Conditions, in addition to any other right **AESH** may have, **AESH** may demand and the Customer must pay on demand to **AESH**, interest on any amount due but unpaid at a rate 2% above the rate specified from time to time under the *Penalty Interest Rates Act 1983*. Interest will accrue daily from the date on which the amount became due for payment under these Terms and Conditions.
20. Unless otherwise specified in the Hire Agreement/Contract, the Rental Installments and Delivery Fee are exclusive of all Taxes. All Taxes payable in connection with the supply and rental of the Equipment by **AESH** to the Customer, or to **AESH** entering into these Terms and Conditions, must be paid by the Customer when requested to do so by **AESH**.
21. The Customer's obligation to pay Rental Installments and any other amount under these Terms and Conditions is absolute and unconditional, and such payments must be made without set-off, counterclaim or deduction. The Customer's obligation to make payments is not affected or reduced for any reason including without limitation by the Customer being unable to use the Equipment for any reason or the Equipment being damaged, lost, stolen, not in the possession of the Customer or not working at any time.

RETURN OF THE EQUIPMENT

22. On termination of these Terms and Conditions, at the end of the Rental Period or where under these Terms and Conditions **AESH** is

entitled to recover, remove or repossess the Equipment, the Customer must (at **AESH's** election):

- (a) make the Equipment available for collection by **AESH** or its agents at the location specified in the Hire Agreement/Contract; or
 - (b) return it to **AESH's** address as specified in the Hire Agreement/Contract.
23. The Customer must ensure that the Equipment is clean and in good condition and repair (fair wear and tear excepted) when it is made available for collection or returned to **AESH**.

OWNERSHIP OF THE EQUIPMENT

24. The Equipment remains the property of **AESH** at all times. The Customer only has the right to use the Equipment on the terms of these Terms and Conditions and must protect the interests of **AESH** at all times.
25. The Customer must not offer, sell, assign, sub-let, mortgage, pledge, Encumber or otherwise deal with the Equipment in any way which is inconsistent or would detract from **AESH's** ownership of the Equipment.
26. The Customer must ensure the Equipment is clearly identifiable as the property of **AESH**.
27. **AESH** may, without the Customer's consent, transfer or Encumber **AESH's** interest in the Equipment or in these Terms and Conditions.

USE AND CARE OF THE EQUIPMENT

28. The Customer must ensure that it, and anyone else who may use the Equipment, uses it:
 - (a) safely, and as per the manufacturer's instructions and instructions provided by **AESH**;
 - (b) lawfully in relation to all applicable, rules, regulations, law and by-laws; and
 - (c) responsibly and with all necessary care, skill and diligence.
29. Unless **AESH** agrees otherwise in writing, the Customer and its employees are the only persons entitled to use the Equipment.
30. The Customer must give **AESH** access, or otherwise ensure **AESH** has access, to the Equipment to view and/or inspect the Equipment during the Rental Period. Failure to provide **AESH** access to the Equipment entitles **AESH** to determine that the Equipment is lost or stolen and irrecoverable, or destroyed or damaged beyond repair, for the purposes of clauses 31 and 37.
31. The Customer must, at its cost, maintain the Equipment in good working order during the Rental Period (except for ordinary wear and tear) and ensure that the Equipment is maintained and serviced in accordance with the manufacturer's and **AESH's** specifications and recommendations. Without limitation, the Customer is responsible for ensuring the equipment is within its calibration period and is functioning and condition is in accordance with the manufacturer's recommendations. To ensure that the Customer will comply with this clause 31, the Customer must not permit any person to carry out any servicing of or repairs to the Equipment unless the person has been approved in writing by **AESH**.
32. The Customer must notify **AESH** as soon as it becomes aware of any defect with, or damage to, the Equipment, immediately cease to use the Equipment and not attempt to repair, or engage a third party to repair, the Equipment. If any defect or damage to the Equipment is caused by the Customer failing to use, maintain or service the Equipment in accordance with these Terms and Conditions, then the Customer is responsible for, and must reimburse **AESH** for, the cost of repairing the defect or damage.
33. The Customer must not modify, alter, add to or make any improvements to the Equipment.

LOCATION OF EQUIPMENT

34. The Equipment must be kept by the Customer at the location specified in the Hire Agreement/Contract and must not be removed from that location without the prior written consent of **AESH**. The Customer warrants that the premises at which the

Equipment is to be kept are, and will be, for the Rental Period, under the sole control of the Customer.

35. If the Equipment is to be kept at premises which are not owned by the Customer, or that are subject to any Encumbrance, if requested by **AESH** at any time, the Customer must obtain from each owner and/or holder of such an Encumbrance a written acknowledgement that the Equipment is **AESH's** property and an authorisation for **AESH** to remove the Equipment from the premises without liability to **AESH**, and provide the acknowledgement and authorisation to **AESH**.

LOSS OR DAMAGE TO THE EQUIPMENT

36. The Customer bears the risk of loss, theft or destruction of, or damage to, the Equipment for any cause whatsoever, commencing on the date that the Customer receives the Equipment from or at the direction of **AESH** and ending at the time the Customer returns the Equipment to **AESH**.
37. No loss, theft, or destruction of, or damage to, the Equipment will relieve the Customer from any obligation under these Terms and Conditions. If **AESH** determines that any Equipment is lost or stolen and irrecoverable, or is destroyed or damaged beyond repair, the Customer must pay **AESH** on demand an amount equal to the full replacement cost of the Equipment (which shall be determined by **AESH** in its sole discretion).

INSURANCE

38. The Customer must, at all times, at its expense, take out and maintain insurance policies covering the following risks in a form, amount and with insurers acceptable to **AESH**, and such policies must note **AESH's** interest in the Equipment:
- (a) loss, theft or destruction of, or damage to, the Equipment for its full replacement value; and
 - (b) public liability and third party property insurance.
39. The Customer must not:
- (a) do anything, or fail to do anything, which may allow an insurer to refuse or reduce a claim under a policy referred to in clause 38;
 - (b) vary any such insurance without **AESH's** consent; or
 - (c) enforce, conduct, settle or compromise a claim under such an insurance policy without **AESH's** consent.
40. Upon **AESH's** request, the Customer must promptly provide **AESH** with evidence of the existence and currency of the insurance policies referred to in clause 38.

DEFAULT

41. An **Event of Default** occurs if:
- (a) the Customer fails to comply with these Terms and Conditions or the terms of any contract between the Customer and **AESH** when due;
 - (b) the Customer is in breach of any other provision of these Terms and Conditions and (if that breach is capable of remedy) the Customer fails to remedy the breach within 7 days of **AESH** having given the Customer written notice of the breach;
 - (c) the Customer has made any misleading or false statement in connection with its application to rent Equipment from **AESH**, or its performance of these Terms and Conditions and/or the Hire Agreement/Contract;
 - (d) an application to wind up the Customer is made, or the Customer is wound up or otherwise ceases to exist;
 - (e) the Customer being an individual is declared bankrupt or becomes of unsound mind;
 - (f) the Customer enters into any composition or arrangement with its creditors or goes into liquidation (voluntarily or otherwise) or has a receiver or liquidator or trustee or administrator or similar official appointed over all or part of its assets;
 - (g) the Customer ceases or threatens to cease to carry on all, or substantially all, of its business or operations;
 - (h) an order being made, or the Customer passing a resolution, or any other step is taken, for the Customer's winding up (including

but not limited to an application being made to a court for an order for its winding up);

- (i) the Customer becomes or is declared or is deemed to be insolvent, or is unable or deemed to be unable to pay its debts, or stops or threatens to stop payments generally;
 - (j) the Customer undergoes a change in its control or ownership not approved by **AESH** in writing; or
 - (k) an event or circumstance occurs in relation to the Customer which is analogous to any event or circumstance specified in paragraphs (d) to (i).
42. Upon the occurrence of an Event of Default, **AESH** may terminate these Terms and Conditions and the rental of Equipment by the Customer by providing written notice of termination to the Customer, in which case these Terms and Conditions and the rental of Equipment will terminate when such notice is provided.
43. If **AESH** gives the Customer a notice of termination under clause 42, the Customer must make the Equipment available for collection in accordance with clause 22 and must pay to **AESH**:
- (a) all Rental Instalments and other amounts due and payable as at the date of termination;
 - (b) the total Rental Instalments that would have been payable under these Terms and Conditions for the Rental Period remaining after the date of termination; and
 - (c) interest and any other amounts payable by the Customer under these Terms and Conditions.
44. If an Event of Default occurs, **AESH**, with or without notice to the Customer, has the right to enter the Customer's premises and remove the Equipment.
45. The Customer must give **AESH** full details of any Event of Default as soon as it becomes aware that the Event of Default has occurred.

EXCLUSION AND LIMITATION OF LIABILITY

46. The Customer acknowledges and agrees that:
- (a) it has taken its own advice as to the taxation, accounting and financial consequences of entering into these Terms and Conditions, and has not relied on **AESH** in relation to any of these matters;
 - (b) it does not enter into these Terms and Conditions as trustee of any trust or settlement, or as agent for any principal that has not been disclosed to **AESH** in writing; and
 - (c) if it enters into these Terms and Conditions as trustee of a trust or settlement, the Customer is liable both in its own right and as trustee of the trust or settlement.
47. The Customer acknowledges that it has undertaken its own inspection and made its own independent enquiries in deciding to rent the Equipment in accordance with these Terms and Conditions.
48. The Customer acknowledges that **AESH** has not made and will not make any express or implied warranties in relation to the Equipment or other goods or services provided under these Terms and Conditions other than those contained in these Terms and Conditions. Subject to clauses 51 and 52, any term that would be implied into these Terms and Conditions, including without limitation any condition or warranty, is expressly excluded to the extent permitted by law.
49. The Customer agrees that **AESH** is not liable in respect of any claim by the Customer (whether in contract, tort, statute or otherwise) for any special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision or use of the Equipment and/or any other goods or services under these Terms and Conditions and whether as a result of any breach, default, negligence or otherwise by **AESH**.
50. Subject to clauses 51 and 52, the maximum liability of **AESH** for any and all breaches of these Terms and Conditions at any time

will be the total amount paid by the Customer to **AESH** under these Terms and Conditions up to that time.

51. If the *Trade Practices Act 1974* (Cth) (or similar state or territory legislation) imposes any liability on **AESH** in respect of the supply of goods or services under these Terms and Conditions which may be limited, the liability of **AESH** is limited, at the option of **AESH**, to:
- (a) in the case of the supply of goods (including the Equipment), any one or more of the following:
 - (i) the replacement of the Equipment or supply of equivalent equipment;
 - (ii) the repair of the Equipment;
 - (iii) the payment of the cost of replacing the Equipment or acquiring equivalent equipment; or
 - (iv) the payment of the cost of having the Equipment repaired.
 - (b) in the case of services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
52. Any of these Terms and Conditions which seek to limit or exclude any term, condition or warranty or the liability of **AESH** will not apply to the extent that such exclusion or limitation would be prohibited by law.

INDEMNITY

53. The Customer indemnifies **AESH**, its agents, employees, successors and assigns (each a **Beneficiary**) from and against all loss, cost, expense or damage (including legal costs on a full indemnity basis and consequential or indirect loss) suffered or incurred by a Beneficiary arising out of or relating to:
- (a) any breach of these Terms and Conditions by the Customer;
 - (b) the occurrence of any Event of Default;
 - (c) any damage to the Equipment during the Rental Period;
 - (d) any action, claim, proceeding or demand instituted or made against **AESH** by any person which arises directly or indirectly out of any breach by the Customer of these Terms and Conditions or any Event of Default;
 - (e) any action, claim, proceeding or demand instituted or made against **AESH** by any person which arises directly or indirectly out of or as a result of **AESH** or its agents entering any premises at which the Equipment is kept and/or removing the Equipment from such premises in accordance with these Terms and Conditions; and
 - (f) any personal injury, death or damage to property caused or contributed to by the Customer, including as a result of the Customer's use of the Equipment.
54. The indemnity in clause 53 is a continuing obligation, separate from and independent of the Customer's other obligations under these Terms and Conditions and survives termination or expiry of the Rental Period or these Terms and Conditions.

USE OF PRODUCTS

55. Except to the extent that **AESH** has made express representations in writing, the Customer shall be responsible for determining the suitability of the Products for the purpose for which they are intended, and acknowledges and agrees that **AESH** is not necessarily aware of that purpose and that the Customer has not relied on **AESH**'s advice.
56. In accordance with the provisions of the *Trade Practices Amendment (Australian Consumer Law) Act 2009* (Cth) (and its related legislation), the Customer acknowledges and agrees that the Products are not goods whose supply is wholly or predominately for personal, domestic or household use or consumption.

GENERAL

57. These Terms and Conditions can only be amended, supplemented, replaced or novated by another document signed by the parties.

58. These Terms and Conditions contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these Terms and Conditions and has no further effect.
59. The rights of **AESH** are cumulative and are in addition to any other rights of that party.
60. All contracts between the Customer and **AESH** (including but not limited to these Terms and Conditions) are governed by the laws of the State of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.
61. Any provision of these Terms and Conditions which is unenforceable, illegal or void or partly unenforceable, illegal or void is, where possible, to be severed to the extent necessary to make these Terms and Conditions enforceable.
62. No failure or partial failure by a party to enforce any of its rights under these Terms and Conditions constitutes a waiver or partial waiver of that right, and no waiver is effective unless it is in writing and signed by authorised representatives of each party.
63. The Customer shall not assign its rights, or novate its obligations, under these Terms and Conditions without the prior written consent of **AESH**. **AESH** may assign its rights, or novate its obligations under these Terms and Conditions, without obtaining the consent of the Customer.
64. Each party must promptly sign all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete these Terms and Conditions and all transactions incidental to it.
65. All notices and other communications provided for or permitted under these Terms and Conditions or otherwise shall be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile or email transmission to the parties' respective contact details notified to each other from time to time.