

<i>Maccaferri Pty Ltd</i> <i>Lacing Tool Agreement</i>	Document:	M-F-03/5
	Issue:	1
	Date:	21/8/00

LACING TOOL AGREEMENT

THIS AGREEMENT made on200 Between:

MACCAFERRI PTY LIMITED ACN 070 182 446 of 22 Powers Road, Seven Hills in the State of New South Wales 2147 ("Maccaferri")

and.....

THE PARTY WHOSE NAME AND ADDRESS APPEARS IN ITEM 1 OF THE SCHEDULE ("the Hirer")

OPERATIVE PROVISIONS

1. Interpretation

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

"Business Day" means any day on which trading banks are generally open for business in Sydney.

"Commencement Date" means the date set out in Item 6 of the Schedule.

"Deposit" means the sum, if any referred to in Item 4 of the Schedule.

"Hire Fee" means the fee set out in Item 3(a) of the Schedule.

"Payment Date" means the date set out in Item 7 of the Schedule.

"Premises" means the premises as set out in Item 2 of the Schedule.

"Reduced Hire Fee" means the fee set out in Item 3(b) of the Schedule.

"Term" means the term set out in Item 5 of the Schedule.

"Tool" means the lacing tool, the box in which the lacing tool is delivered to the Hirer, and all accessories and other items accompanying the lacing tool and enclosed with the lacing tool in the box in which the lacing tool is delivered.

2. Hiring of Tool

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

3. Deposit

3.1 Immediately upon signing of this Agreement the Hirer shall agree to pay Maccaferri the Deposit.

3.2 In the event that the Tool is returned to Maccaferri having sustained damage (fair wear and tear excepted) Maccaferri shall be entitled at its option to appropriate the Deposit (or such part thereof) as shall be necessary to effect any repairs to or

maintenance of the Tool which Maccaferri shall deem reasonably necessary to restore the Tool to good working order and condition.

4. Rent and Other Moneys

4.1 On the Payment Date, or such other date as may be agreed in writing by the parties, the Hirer shall pay to Maccaferri the Hire Fee and provided that the Hirer pays the Hire Fee on the Payment Date and has complied with all the terms and conditions of this Agreement then Maccaferri will accept the Reduced Hire Fee in lieu of the Hire Fee.

4.2 The Hirer's obligation to pay the Hire Fee, or the Reduced Hire Fee set out in Clause 3.1, is absolute and unconditional under any and all circumstances whatsoever.

5. Title

5.1 The Hirer acknowledges that from the Commencement Date the Tool will be and will remain the sole property of Maccaferri and the Hirer shall only have a license to use the Tool.

5.2 The Hirer shall:

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

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

6. Quiet Enjoyment

6.1 Subject to the terms of this Agreement, for so long as the Hirer complies with the terms and conditions of this Agreement and Maccaferri is not otherwise entitled to terminate this Agreement, the Hirer may possess and use the Tool during the Term without interruption from Maccaferri.

6.2 Notwithstanding the provisions of clause 6.1 Maccaferri shall have the right at any time without prior notice to enter upon any premises where the Tool 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.

7. Use and Maintenance

7.1 The Hirer shall:

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

(b) use only appropriately qualified and experienced personnel to operate the Tool;

(c) use the Tool with proper voltages, accessories and in conditions suitable for the use of the Tool;

(d) use the Tool for the purpose of lacing gabions or other double twist wire mesh products together;

(e) operate and maintain the tool in a proper and workmanlike manner and in accordance with all applicable laws, rules and regulations;

(f) keep the Tool in the Hirer's possession and control at the Premises;

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

(h) not make or authorise any replacement, alteration or addition to the Tool;

(i) promptly inform Maccaferri of the location of the Tool whenever requested by Maccaferri;

(j) not create any lien over the Tool and notify any repairers of such prohibition;

(k) notify Maccaferri immediately if there is any malfunction of the Tool and immediately return the Tool to Maccaferri upon request; and

(l) store the Tool in the box in which it was delivered, indoors, in a secure place at the Premises.

8. Assignments and Mortgages

- (j) not create any lien over the Tool and notify any repairers of such prohibition;
- (k) notify Maccaferri immediately if there is any malfunction of the Tool and immediately return the Tool to Maccaferri upon request; and
- (l) store the Tool in the box in which it was delivered, indoors, in a secure place at the Premises.

8. Assignments and Mortgages

The Hirer shall not without the prior written consent of Maccaferri sell, transfer, assign, create any interest in, sub-let, part with possession of or otherwise dispose of or encumber all or part of the Tool or its interest in the Tool either absolutely or by way of security, or agree, offer, attempt or purport to do any such thing. Maccaferri may assign, mortgage, encumber, charge and deal in any way whatsoever with its interest in the Tool subject to this Agreement.

9. Loss and Damage

Subject to the other provisions of this Agreement, all risk of theft, damage or destruction to the Tool or any part thereof, however incurred or occasioned, shall be borne by the Hirer and the Hirer hereby indemnifies Maccaferri in respect of such theft, damage or destruction of the Tool.

10. Assumption of Risk and General Indemnities.

10.1 The Hirer:

- (a) agrees to assume the entire risk of the operation of the Tool and, without limitation:
- (i) agrees to use and maintain the Tool at the risk of the Hirer; and
- (ii) releases to the full extent permitted by law Maccaferri from all liabilities, expenses, claims and demands in respect of any personal or property damage, consequential loss or loss of profit caused directly or indirectly by the Tool or the use or maintenance of the Tool;
- (b) agrees to pay and to indemnify and hold Maccaferri harmless from and against:
- (i) all liabilities, expenses, claims and demands in respect of any personal or property damage made or claimed by any person against the Hirer; and
- (ii) all liabilities, expenses, claims and demands which may at any time be incurred by Maccaferri or made or claimed by any person against Maccaferri;

directly or indirectly in any manner whatsoever in connection with the hiring of the Tool including, without limitation, those relating to:

- (a) the use or operation of the Tool; or
- (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.

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

11. NOTE: EXCLUSION OF IMPLIED WARRANTY UNDER THE TRADE PRACTICES ACT 1974 OR FAIR TRADING ACT

The Trade Practices Act and the Fair Trading Act implies certain terms and warranties into this Agreement. Some of those terms and warranties cannot be excluded or modified. Nothing in this Agreement is intended to exclude, restrict or modify any statutory obligation of Maccaferri if that cannot lawfully be effected under the Trade Practices Act or Fair Trading Act.

12. Return and Repossession of the Tool.

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 Tool to Maccaferri. If the Hirer fails to return the Tool, Maccaferri may, directly or by its agent, take possession of the Tool and for that purpose Maccaferri 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 Tool is or is reasonably suspected of being.

13. Termination

13.1 Maccaferri 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 Maccaferri notifying the Hirer of the breach.

13.2 On termination the Hirer shall pay to Maccaferri all moneys outstanding under this Agreement.

14. Warranties of the Hirer

14.1 The Hirer warrants that:

- (a) in deciding to enter into this Agreement the Hirer has not relied in

any way on Maccaferri's skill or judgement or on any statements, representations or warranties made by Maccaferri;

(b) the Hirer has selected and examined the Tool 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 Tool the Hirer has satisfied itself the Tool is in good and substantial working order and condition and constitutes the Tool the subject of this Agreement.

15 Stamp Duty and other Taxes

The Hirer shall pay all stamp duty or other taxes or penalties for late payment payable in respect of this Agreement.

16 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.

17. General

17.1 (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 Tool.

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

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

17.4 (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 8 of the Schedule, from the date

when such moneys fall due for payment or are expended by Maccaferri.

17.5 (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.

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

SCHEDULE

Item 1 Name and Address of the Hirer

Phone: **Fax:**

Item 2 The Premises (where tool is to be stored)

Item 3 (a) Hire Fee : \$..... per week
(b) Reduced Hire Fee: \$..... per week

Item 4 Deposit \$

Item 5 Term weeks
(or as otherwise agreed in writing by the parties)

Item 6 Commencement Date

Item 7 Payment Date
(Invoicing to be fortnightly)

Item 8 Interest Rate: 1.5% per month

EXECUTED AS AN AGREEMENT

SIGNED FOR AND ON BEHALF OF
MACCAFERRI PTY LIMITED

.....
Signature

.....
Printed Name
(Maccaferri Authorised Personnel)

SIGNED FOR AND ON BEHALF OF

.....
Signature

.....
Printed Name

.....
Position: