

# CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Client Details: <input type="radio"/> Individual <input type="radio"/> Sole Trader <input type="radio"/> Trust <input type="radio"/> Partnership <input type="radio"/> Company <input type="radio"/> Other:				
Full or Legal Name:				
Trading Name: <i>(If different from above)</i>				
Physical Address:			Postcode:	
Billing Address:			Postcode:	
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.		Driver's Licence No:		
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
Company Number:		Date Incorp. <i>(current owners)</i> :		
Nature of Business:			GST No: <i>(if applicable)</i>	
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="radio"/> Rented <input type="radio"/> Owned <input type="radio"/> Mortgaged <i>(to whom)</i> :				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.	
Private Address:			Postcode:	
Driver's Licence No:		Phone No:		Mobile No:
(2) Full Name:			D.O.B.	
Private Address:			Postcode:	
Driver's Licence No:		Phone No:		Mobile No:
Account Terms: <input type="radio"/> 30 Days EOM <input type="radio"/> Other:				
Purchase Order Required? <input type="radio"/> YES <input type="radio"/> NO		Accounts to be emailed? <input type="radio"/> YES <input type="radio"/> NO		
Accounts Email Address:				
Accounts Contact:			Phone No:	
Bank and Branch:			Account No:	
Trade References: <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of SG Equipment Limited which form part of and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT): \_\_\_\_\_ SIGNED (SG): \_\_\_\_\_  
 Name: \_\_\_\_\_ Name: \_\_\_\_\_  
 Position: \_\_\_\_\_ Position: \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: \_\_\_\_\_

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

## Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of SG Equipment Limited and its successors and assigns ("SG") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods, equipment and/or services to

("the Client") [*Insert Company Name in Box Provided*]

**I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:**

1. **GUARANTEE** the due and punctual payment to SG of all monies which are now owing to SG by the Client and all further sums of money from time to time owing to SG by the Client in respect of goods, equipment and services supplied or to be supplied by SG to the Client or any other liability of the Client to SG, and the due observance and performance by the Client of all its obligations contained or implied in any contract or agreement with SG, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to SG, the Guarantor will immediately on demand pay the relevant amount to SG. In consideration of SG agreeing to supply the goods, equipment and/or services to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under this Guarantee and Indemnity (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to SG registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints SG and each director of SG as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which SG may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** SG on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, SG in connection with:
  - (a) the supply of goods, equipment and/or services to the Client; or
  - (b) the recovery of monies owing to SG by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to SG's nominees' costs of collection and legal costs; or
  - (c) monies paid by SG with the Client's consent in settlement of a dispute that arises or results from a dispute between, SG, the Client, and a third party or any combination thereof, over the supply of goods, equipment and/or services by SG to the Client.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

3. **I/We have received, read, and understood SG's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until all monies owing to SG by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence, or neglect to sue on SG's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to SG, each Guarantor shall be a principal debtor and liable to SG accordingly.
6. The liability under this Guarantee and Indemnity shall not be discharged, abrogated, prejudiced, or affected by:
  - (a) any alteration, modification, variation or addition to any contract or agreement in respect of the supply of goods, equipment and/or services;
  - (a) the liquidation, receivership, administration, bankruptcy, dissolution, compromise or scheme of arrangement in respect of the Client;
  - (b) any other act, omission, or event which, but for this provision, might operate to discharge, impair, or otherwise affect any obligations under this Guarantee and Indemnity of any of the rights, powers or remedies conferred by this Guarantee and Indemnity or by law.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean, and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to SG.**
9. I/we irrevocably authorise SG to obtain from any person or company any information which SG may require for credit reference purposes. I/We further irrevocably authorise SG to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with SG as a result of this Guarantee and Indemnity being actioned by SG.
10. The above information is to be used by SG for all purposes in connection with SG considering this Guarantee and Indemnity and the subsequent enforcement of the same.

**For and on behalf of the Client I/We confirm I/We have read, understood, and accept the terms of this Guarantee and Indemnity, and I/We agree to be bound by this Guarantee and Indemnity.**

<b>GUARANTOR-1</b>		
SIGNED: _____		
FULL NAME: _____		
HOME ADDRESS: _____		
DATE OF BIRTH: _____		
SIGNATURE OF WITNESS: _____		
NAME OF WITNESS: _____		
OCCUPATION: _____		
PRESENT ADDRESS: _____		
EXECUTED as a Deed this	day of	20____

<b>GUARANTOR-2</b>		
SIGNED: _____		
FULL NAME: _____		
HOME ADDRESS: _____		
DATE OF BIRTH: _____		
SIGNATURE OF WITNESS: _____		
NAME OF WITNESS: _____		
OCCUPATION: _____		
PRESENT ADDRESS: _____		
EXECUTED as a Deed this	day of	20____

Note: 1. If the Client is a proprietary limited company, the Guarantor(s) must be the director(s) of the company.

2. If the Client is a limited partnership, the Guarantor(s) must be the general partners

3. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

4. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

# SG Equipment Limited – Terms & Conditions of Trade

1. Definitions
- 1.1 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting SG to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.2 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.3 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using SG's website, then the Client shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to making enquiries via the website.
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by SG to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by SG to the Client.
- 1.5 "Goods" means all Goods or Services including any parts, accessories and/or consumables supplied by SG to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by SG to the Client.
- 1.7 "Price" means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax ("GST") where applicable) as agreed between SG and the Client in accordance with clause 5 below.
- 1.8 "SG" means SG Equipment Limited, its successors and assigns.
2. Acceptance
- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
- (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with SG and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, SG reserves the right to refuse delivery.
- 2.6 The Client acknowledges and accepts that the supply of Goods or Equipment for accepted orders may be subject to availability and if, for any reason, Goods or Equipment are not or cease to be available, SG reserves the right to vary the Price with alternative Goods or Equipment as per clause 5.2. SG also reserves the right to halt all Services until such time as SG and the Client agree to such changes.
- 2.7 The commencement date shall be the date of the first delivery of the Equipment. Fixed Price contracts for long term leased Equipment shall be for the period ('initial term') as agreed between both parties and shall be reviewed automatically, thereafter, for like periods ('additional terms') unless agreed otherwise. Termination by either party will be by giving the required notice of not less than one (1) month's notice as defined in the contract prior to the expiration date of the initial term or any additional term.
- 2.8 Notwithstanding clause 2.7 the Client acknowledges and accepts that the Price stated will remain fixed for an initial period of twelve (12) months from the date of the signed leased contract but shall be subject to revision on the basis of movement in the Consumer Price Index (CPI).
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. Errors and Omissions
- 3.1 The Client acknowledges and accepts that SG shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by SG in formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by SG in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of SG; the Client:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
- (b) shall not be responsible for any additional costs incurred by SG arising from the error or omission.
4. Change in Control
- 4.1 The Client shall give SG not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by SG as a result of the Client's failure to comply with this clause.
5. Price and Payment
- 5.1 At SG's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by SG to the Client; or
- (b) SG's quoted Price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.
- 5.2 SG reserves the right to change the Price:
- (a) if a variation to the Goods/ Equipment which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection, limitations to accessing the site, stock availability, poor weather conditions, safety considerations), which are only discovered on commencement of the Services; or
- (d) in the event of increases to SG in the cost of labour or materials (including, but not limited to, taxes, levies, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or freight and insurance charges) which are beyond SG's control.
- 5.3 Variations will be charged for on the basis of SG's quotation, and will be detailed in writing, and shown as variations on SG's invoice. The Client shall be required to respond to any variation submitted by SG within ten (10) working days. Failure to do so will entitle SG to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At SG's sole discretion, a reasonable non-refundable deposit may be required.
- 5.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by SG, which may be:
- (a) on or before delivery of the Goods/Equipment;
- (b) by way of instalments/progress payments in accordance with SG's payment schedule;
- (c) for certain approved Clients, due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) falling any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SG.
- 5.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and SG.
- 5.7 SG may in its discretion allocate any payment received from the Client towards any invoice that SG determines and may do so at the time of receipt or at any time afterwards. On any default by the Client SG may re-allocate any payments previously received and allocated. In the absence of any payment allocation by SG, payment will be deemed to be allocated in such manner as preserves the maximum value of the PPSA's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SG nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to SG an amount equal to any GST SG must pay for any supply by SG under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
6. Delivery
- 6.1 Delivery ('Delivery') of the Goods/Equipment or Services is taken to occur at the time that:
- (a) the Services are provided by SG at SG's premises; or
- (b) SG (or SG's nominated carrier) delivers the Goods/Equipment (or provides Services) to the Client's nominated address even if the Client is not present at the address.
- 6.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 6.3 Any time specified by SG for Delivery of the Goods/Equipment is an estimate only and SG will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that SG is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Client, then SG shall be entitled to charge a reasonable fee for redelivery and/or storage.
7. Risk to Goods and/or Services
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, SG is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SG is sufficient evidence of SG's rights to receive the insurance proceeds without the need for any person dealing with SG to make further enquiries.
- 7.3 If the Client requests SG to leave Goods outside SG's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.4 Where SG is requested to store the Client's Goods or machine, or where Goods or machines are not collected within twenty-four (24) hours of advice to the Client that they are ready for collection, then SG (at its sole discretion) may charge a reasonable fee for storage.
- 7.5 For roadside assistance, a minimum call-out fee shall be applicable, which shall be increased for any after-hours call-outs.
- 7.6 All low and/or salvage fees will be charged to the Client and will be added to the Price.
- 7.7 If SG has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 7.8 The Client acknowledges and agrees that SG shall be entitled to:
- (a) retain any components replaced during the supply of the Services; and
- (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.
- 7.9 Where SG is to supply any Services at the Client's nominated address, then the Client shall be liable for all costs incurred by SG from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at SG's standard rates and any Goods purchased for the Services).
- 7.10 The Client acknowledges that SG is only responsible for parts that are replaced by SG and that in the event that other parts/goods, subsequently fail, the Client agrees to indemnify SG against any loss or damage to the Goods, or caused by the parts/goods, or any part thereof howsoever arising.
- 7.11 Where the Client has supplied products for SG to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, in SG's opinion, it is believed that the materials supplied are non-conforming products and will not conform to state and/or territory regulations, then SG shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change will be invoiced in accordance with clause 5.2. SG shall not be liable for the loss of or damage to the vehicle, its accessories or contents while garaged being serviced or being driven in connection with the work authorised unless it is caused by the negligence of SG or SG's employees.
- 7.12 It is the Client's responsibility to ensure that the vehicle is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on SG's premises. The vehicle is at all times stored and repaired at the Client's sole risk.
- 7.13 If a vehicle or component is submitted for repair under a warranty or insurance claim, and the claim is declined or payment delayed, the Client is liable for payment and agrees to pay for any such repair.
8. Access
- 8.1 The Client shall ensure that SG has clear and free access to the Client at all times to enable them to deliver the Equipment, Goods and/or undertake the Services. SG shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of SG.
- 8.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, forklifts, or other heavy equipment. The Client agrees to indemnify SG against all costs incurred by SG in recovering such vehicles in the event they become bogged or otherwise immovable.
9. Compliance with Laws
- 9.1 The Client and SG shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
10. Title to Goods
- 10.1 SG and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid SG all amounts owing to SG; and
- (b) the Client has met all of its other obligations to SG.
- 10.2 Receipt by SG of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 10.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to SG on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for SG and must pay to SG the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for SG and must pay or deliver the proceeds to SG on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SG and must sell, dispose of or return the resulting product to SG as it so directs;
- (e) the Client irrevocably authorises SG to enter any premises where SG believes the Goods are kept and recover possession of the Goods;
- (f) SG may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SG;
- (h) SG may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
11. Personal Property Securities Act 1999 ("PPSA")
- 11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods/Equipment that have previously been supplied and that will be supplied in the future by SG to the Client, and the proceeds from such Goods/Equipment as listed by SG to the Client in invoices rendered from time to time.
- 11.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SG may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, SG for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment or the proceeds of such Goods/Equipment in favour of a third party without the prior written consent of SG; and
- (d) immediately advise SG of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.3 Unless otherwise agreed to in writing by SG, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.4 The Client shall unconditionally ratify any actions taken by SG under clauses 11.1 to 11.3.
- 11.5 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11.6 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 11 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 11 will apply generally for the purposes of the PPSA.
12. Security and Charge
- 12.1 In consideration of SG agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 12.2 The Client indemnifies SG from and against all SG's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising SG's rights under this clause.
- 12.3 The Client irrevocably appoints SG and each director of SG as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
13. Consumer Guarantees Act 1993 and the Fair Trading Act 1986
- 13.1 This Contract is subject to the provisions the Consumer Guarantees Act 1993 ("CGA") in all cases except where the Client is not contracting as a consumer within the meaning of the CGA.
- 13.2 SG agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").
14. Defects and Returns
- 14.1 The Client shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify SG of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Client shall afford SG an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery. If the Client believes the Goods are defective in any way, if the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which SG has agreed in writing that the Client is entitled to reject, SG's liability is limited to either (at SG's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 14.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 14.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein); and
- (a) the Client has complied with the provisions of clause 14.1; and
- (b) SG has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Client's cost within seven (7) days of the Delivery date; and
- (d) SG will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures, and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.3 If SG accepts that the Client is entitled to reject the Goods following their return pursuant to clause 14.2(b) SG will reimburse the Client's actual and reasonable costs of return Delivery.
- 14.4 SG may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 14.5 Subject to clause 14.1, non-stockist items or Goods made to the Client's specifications are not acceptable for credit or return.
15. Warranty
- 15.1 Subject to the conditions of warranty set out in Clause 15.2 SG warrants that if any defect in any workmanship provided by SG becomes apparent and is reported to SG within twelve (12) months of the date of Delivery (time being of the essence) then SG will either (at SG's sole discretion) replace or remedy the defect.

## SG Equipment Limited – Terms & Conditions of Trade

- 15.2 The conditions applicable to the warranty given by Clause 15.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client to properly maintain any Goods or serviced item; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by SG; or
    - (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and SG shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without SG's consent.
  - (c) in respect of all claims SG shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 15.3 For Goods not manufactured by SG, the warranty shall be the current warranty provided by the manufacturer of the Goods. SG shall not be bound by nor responsible for any term, condition, representation, or warranty other than that which is given by the manufacturer of the Goods.
16. **Intellectual Property**
- 16.1 Where SG has designed, drawn, or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of SG. Under no circumstances may such designs, drawings and documents be used without the express written approval of SG.
- 16.2 The Client warrants that all designs, specifications, or instructions given to SG will not cause SG to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SG against any action taken by a third party against SG in respect of any such infringement.
- 16.3 The Client agrees that SG may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SG has created for the Client.
17. **Default and Consequences of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes SG any money the Client shall indemnify SG from and against all costs and disbursements incurred by SG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SG's collection agency costs, and bank dishonour fees).
- 17.3 Further to any other rights or remedies SG may have under this Contract, if a Client has made payment to SG, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by SG under this clause 17, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 17.4 Without prejudice to SG's other remedies at law SG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SG shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SG becomes overdue; or in SG's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by SG;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
18. **Cancellation**
- 18.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply or purchase of Goods or Equipment on hire to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 18.2 If SG, due to reasons beyond SG's reasonable control, is unable to deliver any Goods/Equipment to the Client, SG may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice SG shall repay to the Client any money paid by the Client for the Goods/Equipment. SG shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 The Client may cancel Delivery of the Goods/Equipment by written notice served within twenty-four (24) hours of placement of the order. Failure by the Client to otherwise accept Delivery of the Goods/Equipment shall place the Client in breach of this Contract.
- 18.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
19. **Privacy Policy**
- 19.1 All emails, documents, images or other recorded information held or used by SG is "Personal Information" as defined and referred to in clause 19.3 and therefore considered confidential. SG acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. SG acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by SG that may result in serious harm to the Client, SG will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- Notwithstanding clause 19.1, privacy limitations will extend to SG in respect of Cookies where the Client utilises SG's website to make enquiries. SG agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to SG when SG sends an email to the Client, so SG may collect and review that information ("collectively Personal Information")
- If the Client consents to SG's use of Cookies on SG's website and later wishes to withdraw that consent, the Client may manage and control SG's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- The Client authorises SG or SG's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by SG from the Client directly or obtained by SG from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- Where the Client is an individual the authorities under clause 19.3 are authorities or consents for the purposes of the Privacy Act 2020.
- The Client shall have the right to request (by e-mail) from SG, a copy of the Personal Information about the Client retained by SG and the right to request that SG correct any incorrect Personal Information.
- SG will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- The Client can make a privacy complaint by contacting SG via e-mail. SG will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- Service of Notices**
- Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- Trusts**
- 21.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not SG has notice of the Trust, the Client covenants with SG as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Client will not during the term of the Contract without consent in writing of SG (SG will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust fund or trust property.
22. **General**
- 22.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired. These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- Subject to the CGA, the liability of SG and the Client under this Contract shall be limited to the Charges.
- SG may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- The Client cannot licence or assign without the written approval of SG.
- SG may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of SG's sub-contractors without the authority of SG.
- The Client agrees that SG may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for SG to provide Goods/Equipment to the Client.
- Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to SG, following cessation of a Force Majeure.
- Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- Additional Terms & Conditions Applicable to Hire Only**
- Hire Period**
- If SG agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves SG's premises and continue until the Client notifies SG that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless SG confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies SG immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- Risk to Equipment**
- SG retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.
- The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies SG for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- The Client will insure, or self insure, SG's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would 21.1 permit an insurer to decline any claim.
- The Client accepts full responsibility for and shall keep SG indemnified against all liability in respect of all actions, proceedings, claims, damages, costs, and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- Title to Equipment**
- The Equipment is and will at all times remain the absolute property of SG.
- If the Client fails to return the Equipment to SG, then SG or SG's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied, or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- The Client is not authorised to pledge SG's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- Client's Responsibilities**
- The Client shall:
- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
  - (b) notify SG immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (c) maintain the Equipment as is required by SG (including, but not limited to, maintaining (where applicable) water (which must be maintained with the use of distilled water only), oil and fluid levels and tyre pressures (including pneumatic punctures) and batteries);
- (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by SG or posted on the Equipment;
  - (e) ensure that:
    - (i) all persons operating or driving the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to SG upon request;
    - (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
    - (iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.
  - (f) be liable for any parking or traffic infringement, impoundment, towage, and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or SG relating to any such matters or occurrences.
  - (g) comply with all workplace health and safety laws relating to the Equipment and its operation;
  - (h) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to SG;
  - (i) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return to the Client then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
  - (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
  - (k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
  - (l) indemnify and hold harmless SG in respect of all claims arising out of the Client's use of the Equipment;
  - (m) immediately notify SG should the Goods become bogged or stuck (refer also 8.2).
- The Client shall not:
- (a) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (b) exceed the recommended or legal load and capacity limits of the Equipment;
  - (c) use or carry any animals, illegal, prohibited or dangerous substance in or on the Equipment;
  - (d) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- Immediately on request by SG the Client will pay:
- (a) the new list Price of any Equipment that is for whatever reason destroyed, written off or not returned to SG;
  - (b) all costs incurred in cleaning the Equipment;
  - (c) all costs of repairing any damage caused by:
    - (i) the ordinary use of the Equipment;
    - (ii) the negligence of the Client or the Client's agent;
    - (iii) vandalism, or (in SG's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
  - (d) the cost of fuels and consumables provided by SG and used by the Client;
  - (e) any:
    - (i) lost hire fees SG would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
    - (ii) costs incurred by SG in picking up and returning the Equipment to SG's premises if the Client does not return the Equipment to SG's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
    - (iii) insurance excess payable in relation to a claim made by either the Client or SG in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or SG's.
- Inspection of Equipment**
- The Client hereby grants SG (including its employees, duly authorised agents, or representatives) the right, at all times, upon SG giving to the Client reasonable notice and without unduly interfering with the Client's business or operations, to:
- (a) enter onto the site(s) where the Equipment or any part thereof may be located;
  - (b) inspect the state of repair or condition of the Equipment;
  - (c) carry out any such tests on the Equipment as may be reasonably necessary including but not limited to, health and safety tests or inspections;
  - (d) observe the use of the Equipment by the Client; and
  - (e) do any act, matter or thing which may be required at law or to otherwise protect SG's rights or interests in the Equipment.