

**SARSFIELD ENGINEERING LIMITED  
(EquipmentShare)**

**RENTAL TERMS AND CONDITIONS**

**1 AGREEMENT**

1.1 Unless agreed otherwise by EquipmentShare in writing, these rental terms and conditions (**Rental Terms and Conditions**), shall apply to each hire of Equipment from EquipmentShare to the Customer.

1.2 If:

- (a) EquipmentShare accepts a request for the hire of any item of Equipment from the Customer; or
- (b) the Customer accepts a quote for the hire of any item of Equipment from EquipmentShare,

the terms of such request or quote (**Order Form**) together with these Rental Terms and Conditions shall constitute the legally binding rental agreement between EquipmentShare and the Customer for the hire of the applicable Equipment (**Rental Agreement**). Any variations or addition to the Rental Agreement not expressly agreed in writing by EquipmentShare are expressly rejected by EquipmentShare.

**2 RENTAL PERIOD**

2.1 EquipmentShare agrees to rent the Equipment to the Customer for the rental period (as set out in clause 2.2) (**Rental Period**) on the terms and subject to the conditions set out in the Rental Agreement.

2.2 The Rental Period will commence on delivery of the Equipment to the Customer and will end on the earlier of:

- (a) the date that EquipmentShare collects the Equipment from the Customer pursuant to clause 2.3; or
- (b) the date that the Rental Agreement is terminated under clause 15.

2.3 EquipmentShare will collect the Equipment from the Customer:

- (a) within 3 Business Days of receipt of a telephone call, email or text from the Customer requesting pickup of the Equipment; or
- (b) if the Rental Agreement is terminated for any reason, within 3 Business Days of termination,

provided that if EquipmentShare determines that the Equipment cannot be collected within the relevant timeframe specified above, EquipmentShare will advise the Customer of an alternative date for collection of the Equipment and the failure of EquipmentShare to collect the Equipment within the relevant timeframe specified above will not be a breach of this Agreement and will not alter the Rental Period.

2.4 Notwithstanding clause 2.3, if EquipmentShare has provided their prior written consent, the Customer may at its own risk return the Equipment to EquipmentShare at the address notified by EquipmentShare.

2.5 If an end date is listed in the Order Form, the Customer acknowledges and agrees that any such end date is an estimate only and the Rental Period will automatically be extended until such time that the Customer contacts EquipmentShare requesting pickup of the Equipment in accordance with clause 2.3(a).

**3 RENTAL PAYMENT**

3.1 The Customer will pay the Rental Payment and any Additional Costs to EquipmentShare for the Rental Period in accordance with this clause 3.

3.2 If daily, weekly and monthly rates are specified in the Order Form the Rental Payment will be calculated based on the length of the Rental Period as follows:

- (a) if the number of days in the Rental Period is 7 days or less, the lesser of:
  - (i) the number of days in the Rental Period multiplied by the daily rate; or
  - (ii) the weekly rate;
- (b) if the number of days in the Rental Period is more than 7 days but less than 28 days, the lesser of:
  - (i) the sum of:
    - A the number of full 7 day periods within the Rental Period multiplied by the applicable weekly rate; plus
    - B the remaining number of days in the Rental Period

after subtracting the time in (i) multiplied by the applicable weekly rate and divided by 7; or

- (ii) the monthly rate;
- (c) if the number of days in the Rental Period is 28 days or more, the sum of:
  - (i) the number of 28 day periods the Equipment is in the Customer's possession multiplied by the monthly rate; plus
  - (ii) the remaining number of days in the Rental Period after subtracting the time in (i) multiplied by the monthly rate and divided by 28,

plus any Additional Hours charges payable under clause 3.3 and Additional Costs payable under clause 3.5.

3.3 Unless expressly agreed otherwise in writing by EquipmentShare prior to commencement of the Rental Period, the daily, weekly and monthly rates include the use of the Equipment for 6 Machine Hours per day, 30 Machine Hours per week (7 days) and 120 Machine Hours per month (28 days) (**Included Hours**). The total Included Hours for the Rental Period will be calculated by reference to daily, weekly or monthly rate applicable in accordance with clause 3.2. The Customer must pay for all Machine Hours that exceed the total Included Hours (**Additional Hours**), such charges for the Additional Hours to be calculated as a pro-rata amount of the daily, weekly or monthly rate applicable in accordance with clause 3.2.

3.4 If the Order Form provides for a Machine Hour Rate and a minimum number of machine hours for the Rental Period, clause 3.2 and clause 3.3 will not apply and the Rental Payment will be the greater of:

- (a) the minimum number of Machine Hours listed in the Order Form multiplied by the Machine Hour Rate; or
- (b) the Machine Hours recorded for the Rental Period multiplied by the Machine Hour Rate,

plus any Additional Costs payable under clause 3.5.

3.5 Additional Costs include:

- (a) the Damage Waiver Fee (if applicable), being an amount equal to 10% of the Rental Payment plus GST;
- (b) delivery and pick up charges, which will be calculated based on the type of Equipment being delivered or picked up, the requested delivery and pickup time, the distance of the delivery or pickup, and other relevant considerations. Delivery and pickup charges will be negotiated with the Customer prior to the delivery or pick up (as applicable);
- (c) fuel and oil charges of 200% of the fuel and oil cost to EquipmentShare for fuel for Equipment returned with less fuel and oil than it was delivered to the Customer with;
- (d) cleaning charges as determined by EquipmentShare in its sole discretion for Equipment which is not returned in the clean condition it was delivered in; and
- (e) any other costs payable by the Customer to EquipmentShare under this Rental Agreement.

3.6 A fee of 2% of the total payment made is payable by the Customer to EquipmentShare on any payments made under this Agreement by credit card.

3.7 The rates listed in the Order Form do not include GST and the Customer will be responsible for payment of GST on top of those rates.

3.8 EquipmentShare will invoice the Customer monthly in arrears in accordance with clause 6 or clause 7 (as applicable) for Rental Payments or part Rental Payments accumulated during each month.

3.9 EquipmentShare may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at a rate of 3% per month calculated on a daily basis.

3.10 EquipmentShare may at any time deduct or set-off amounts owed by EquipmentShare to the Customer with amounts owed by the Customer to EquipmentShare.

3.11 The Customer will be liable for all expenses and costs (including legal costs) incurred by or on behalf of EquipmentShare for recovering or attempting to recover, any overdue amounts from the Customer.

#### 4 DELIVERY AND RETURN OF THE EQUIPMENT

- 4.1 EquipmentShare will use all reasonable endeavours to deliver the Equipment to the Customer's job site listed in the Order Form (**Job Site**) on the start date listed in the Order Form, but the time of delivery shall not be of the essence and EquipmentShare will not be liable in any way to the Customer or any other party for any loss resulting from delay. The Customer must provide EquipmentShare with reasonable and clear access to the Job Site to enable delivery of the Equipment.
- 4.2 Delivery will occur when the Customer collects the Equipment from EquipmentShare or when EquipmentShare delivers the Equipment to the Job Site, at which point the Equipment shall be at the sole risk of the Customer. EquipmentShare will not be liable for any damage to the Equipment once risk has passed to the Customer. Risk in the Equipment will remain with the Customer for the duration of the Rental Period and until such time that EquipmentShare takes back possession of the Equipment in accordance with clause 2.3 or 2.4.
- 4.3 The Customer is responsible for checking the Equipment on receipt and any discrepancies or damage must be reported to EquipmentShare within two (2) Business Days of delivery of the Equipment to the Customer.
- 4.4 Where the Customer wishes to be a Credit Account Customer EquipmentShare will be under no obligation to deliver the Equipment to the Customer until such time the Credit Account Application has been completed by the Customer and approved by EquipmentShare.
- 4.5 The Customer will return the Equipment to EquipmentShare:
- (a) in the same condition that the Equipment was delivered to the Customer save for fair wear and tear;
  - (b) with the same amount of fuel and oil that the Equipment had when delivered to the Customer; and
  - (c) in a clean condition.

#### 5 LOCATION AND OWNERSHIP OF THE EQUIPMENT

- 5.1 The Equipment will be used and stored at the Job Site at all times during the Rental Period. The Equipment will not be moved from the Job Site during the Rental Period without EquipmentShare's prior written consent.
- 5.2 The Customer will not sublet the Equipment or otherwise make the Equipment available to any person except with EquipmentShare's written consent.
- 5.3 The Equipment shall either be kept separate from other Equipment at the Job Site or labelled in such a way so that the Equipment is easily identifiable as belonging to EquipmentShare.
- 5.4 Despite delivery of the Equipment to the Customer, and passing of risk, and possession of Equipment to the Customer, title to and ownership of the Equipment is retained at all times by the Equipment Owner, and the Equipment is held by the Customer as bailee only.

#### 6 NON-CREDIT ACCOUNT CUSTOMERS

- 6.1 If the Customer is not a Credit Account Customer the provisions of this clause 6 applies and the provisions of clause 7 do not apply.
- 6.2 Unless otherwise agreed with EquipmentShare, the Customer must pay to EquipmentShare all amounts invoiced under clause 3 electronically in cleared funds without any set off or deduction within 7 days of the date of each invoice.
- 6.3 EquipmentShare may in its sole discretion require the Customer to pay a deposit prior to delivering the Equipment to the Job Site or prior to the Customer picking up the Equipment ("the **Deposit**").
- 6.4 The Deposit will be applied towards the final Rental Payment invoiced following return of the Equipment. If the amount of the Deposit exceeds the total amount payable under the final invoice, EquipmentShare will refund the difference to the Customer within 30 days of the conclusion of the Rental Period.
- 6.5 If the Deposit is less than the total amount payable under the final invoice the balance will be payable in accordance with clause 6.2.
- 6.6 EquipmentShare may in its sole discretion require a hold on the Customer's credit card to secure payments due to EquipmentShare under this Agreement. If EquipmentShare requires this hold as security:
- (a) EquipmentShare will inform the Customer of the amount of the hold;
  - (b) the Customer agrees that EquipmentShare may unilaterally increase the amount held on the Customer's credit card if the Rental Period is extended beyond the end date in accordance with clause 2.5;
  - (c) If EquipmentShare is unable to place a hold or increase a hold

on the Customer's credit card for any reason (including where the Customer does not approve the hold), EquipmentShare may immediately cancel this Agreement, and collect the Equipment from the Customer, and EquipmentShare will not be liable for any costs (including legal costs), claims, damages, expenses or any liabilities suffered or incurred by the Customer whether directly or indirectly from cancellation under this clause;

- (d) EquipmentShare will release the hold within a reasonable time of receipt of all payments due to EquipmentShare by the Customer under this Agreement.

#### 7 CREDIT ACCOUNT CUSTOMERS

- 7.1 If the Customer submits a Credit Account Application and EquipmentShare, at its discretion, approves such Credit Account Application:
- (a) EquipmentShare will approve a credit limit for the Customer and advise the Customer of this limit. The limit must not be exceeded.
  - (b) the limit under 7.1(a) can be reviewed by EquipmentShare from time to time or at the Customer's request and may in EquipmentShare's discretion be decreased or increased on review.
  - (c) the Customer will arrange for the rental of further equipment from EquipmentShare by submitting a request to EquipmentShare in writing and, on EquipmentShare's acceptance of the request, a new rental agreement in respect of the further equipment will form on the terms of these Rental Terms and Conditions.
  - (d) the Customer will not be required to complete a further Credit Account Application for the rental of additional equipment from EquipmentShare unless the credit required for the equipment will exceed the Customer's approved credit limit.
  - (e) these Rental Terms and Conditions will be binding on the Customer with respect to all Equipment rented from EquipmentShare or agreed to be rented from EquipmentShare in the future.
  - (f) EquipmentShare will invoice the Customer on the last Business Day of each month for Rental Payments accumulated within that month or following return of the Equipment under clause 4.5.
  - (g) the Customer must pay all amounts invoiced under clause 7.1(f) on or before the 20th day of the month following the month in which the invoice is issued, without any set off or deduction, by depositing the invoiced amount into the bank account nominated by EquipmentShare, or by such other method agreed with EquipmentShare.

#### 8 PERSONAL PROPERTY SECURITIES ACT

- 8.1 The Customer grants to EquipmentShare a security interest in:
- (a) all of the Customer's present and after acquired personal property (as defined in the PPSA) as security for the due payment of all amounts owing by the Customer to EquipmentShare from time-to-time, and to secure performance of all obligations owing by the Customer to EquipmentShare); and
  - (b) the Equipment if the Rental Period is for a term of more than one year (including any extensions to the Rental Period) or for an indefinite term,
- (the "**Collateral**").
- 8.2 The Customer acknowledges that it has received value at the date of delivery of the Equipment and that nothing in this Agreement provides that a security interest created herein attaches at a later time than the time specified in section 40(1) of the PPSA: EquipmentShare has not agreed to postpone the time for attachment of the security interest granted under this clause 8.
- 8.3 The Customer undertakes:
- (a) to promptly do all things, execute all documents and/or provide any information which EquipmentShare may reasonably require to enable EquipmentShare to perfect and maintain the perfection of its security interests (including by registration of a financing statement);
  - (b) each security interest created under this Agreement is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with any other security or guarantee provided by or for the Customer.

- 8.4 The Customer waives its rights under the PPSA to receive a copy of any verification statement, financing statement or financing change statement (as those terms are defined in the PPSA) and agrees that:
- as between EquipmentShare and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 133 and 134 of the PPSA and the Customer agrees that it has none of the rights referred to in section 107(2)(a) to (i) of the PPSA;
  - to the extent permitted by law, this Agreement excludes any other provisions of the PPSA which may be excluded at EquipmentShare's discretion and which would otherwise confer rights on the Customer; and
  - where EquipmentShare has rights in addition to Part 9 of the PPSA, those rights will continue to apply.
  - The Customer will:
    - not change its name, address or contact details without providing EquipmentShare with 14 days prior written notice;
    - not lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by EquipmentShare under the PPSA; and
    - provide any information which EquipmentShare reasonably requires to complete a financing statement or a financing Change Statement.

8.5 The Customer will, upon demand, pay all EquipmentShare's costs and expenses including legal costs (on a solicitor-client basis) in relation to or in connection with the registration, maintenance and enforcement of EquipmentShare's security interest.

8.6 To further secure the Customer's indebtedness to EquipmentShare, the Customer agrees EquipmentShare shall have the right, at its absolute discretion, to complete and register a mortgage (in the form of the then current Auckland District Law Society all obligations mortgage) over any interest in any land owned or held by the Customer now or in the future (whether a beneficial or legal interest owned jointly or alone, and as trustee or otherwise) and/or to lodge a caveat against the title to such land, and the Customer irrevocably appoints EquipmentShare as its attorney for the purposes of executing and registering such mortgage and specifically authorises EquipmentShare to lodge a caveat against such land.

8.7 EquipmentShare is not required to monitor, enforce or apply its rights under the security interest created in this clause 8 or any guarantee or other security held by EquipmentShare for the Customer's obligations under this Agreement at any time. Failure to enforce its rights will not constitute the waiver of EquipmentShare's security interest or any other security.

## 9 LIABILITY

9.1 The only warranties given by EquipmentShare in respect of the Equipment are the express written manufacturer warranties supplied (if any) to the Customer in respect of specified Equipment. Any such warranty may include situations that void the warranty. All other terms, conditions, warranties and representations expressed or implied, whether by operation of law, statutory or otherwise are expressly excluded (except any which may not lawfully be excluded).

9.2 If any mechanical fault, defect or malfunction occurs to the Equipment, as determined by EquipmentShare in its sole discretion (**Defect**) during the Rental Period, the Customer must:

- immediately cease using the Equipment;
- report the Defect to EquipmentShare as soon as possible and in any case within 24 hours of becoming aware of the Defect;
- make the Equipment available to EquipmentShare for inspection; and
- not carry out any work or repairs on the Equipment unless expressly authorised by EquipmentShare.

9.3 The Customer's sole remedy in respect of any Equipment that suffers a Defect shall be:

- at EquipmentShare's election, the repair or replacement of the Equipment with similar equipment which shall become the subject of this Agreement; and
- the waiver of any Rental Payment accrued during the time that the Customer was unable to use the Equipment due to the Defect,

provided that to the extent the Defect was caused or contributed to by the Customer's misuse, abuse or neglect of the Equipment or any

other act or omission by the Customer in breach of this Agreement (as determined by EquipmentShare in its sole discretion), the Customer shall bear the costs of such repair and the Rental Payment shall not be waived during the time that the Customer was unable to use the Equipment.

9.4 To the fullest extent permitted by law the maximum aggregate liability of EquipmentShare under or in connection with this Agreement whether in contract, tort (including negligence), breach of statutory duty or otherwise is limited to the Rental Payments paid and/or payable by the Customer under this Rental Agreement.

9.5 To the fullest extent permitted by law, the Customer releases EquipmentShare from any claim, action, damage, loss, liability, cost or expense which EquipmentShare incurs or is liable for in connection with any loss, damage, claim or injury arising out of the performance of the Customer's duties under this Agreement except to the extent caused or contributed to by EquipmentShare's negligence or default.

9.6 The Customer indemnifies EquipmentShare against, and shall pay to EquipmentShare upon demand, any cost (including legal costs), claim, damage, expense or liability suffered or incurred by EquipmentShare whether arising directly or indirectly from EquipmentShare acting to recover any Equipment or monies payable by the Customer pursuant to the Rental Agreement, or from any act or omission of the Customer in breach of the Rental Agreement, or otherwise in connection with the exercise or attempted exercise of any of EquipmentShare's rights or remedies under the Rental Agreement other than liability that is limited pursuant to clauses 11.3 and 11.4.

## 10 DAMAGE, THEFT AND ACCIDENTS

10.1 The Customer is liable for:

- any loss of, or damage to, the Equipment beyond ordinary wear and tear during the Rental Period, including all glass or panel damage;
- any consequential damage, loss or costs incurred by EquipmentShare, including salvage costs and any damages EquipmentShare must pay to any parties with an interest in the Equipment; and
- any loss of, or damage to, property of any third party caused by or in relation to the operation of the Equipment.

10.2 If the Equipment is damaged, lost or stolen at any time during the Rental Period, the Customer must, in the case of damage or loss, immediately cease using the Equipment and report the damage, loss, or theft to EquipmentShare, and in the case of theft, the New Zealand Police, as soon as possible and in any case within 24 hours of becoming aware of the damage, loss or theft. EquipmentShare will, at EquipmentShare's election, repair the damage to the Equipment (if possible) or replace the Equipment with similar equipment which shall become the subject of this Rental Agreement. The Customer must not arrange or carry out any repair work to the Equipment in any circumstances without EquipmentShare's prior written consent.

10.3 If the Equipment is involved in an accident on the road during the Rental Period, the Customer must:

- inform the Police immediately;
- record full details, including:
  - registration number of any other vehicles involved;
  - name, driver license number and address of any other drivers involved; and
  - name and address of any witnesses,
- contact EquipmentShare immediately, and provide them with the details in (b);
- not make any admission of liability without EquipmentShare's prior written consent.

## 11 DAMAGE WAIVER, INSURANCES AND INDEMNITIES

11.1 The Customer must pay the Damage Waiver Fee for the duration of the Rental Period unless EquipmentShare has agreed to the Customer making their own insurance arrangements for the Equipment in accordance with clause 11.6 and EquipmentShare has approved such insurance arrangements.

11.2 The following clauses 11.3 to 11.6 apply if the Customer has agreed to pay the Damage Waiver Fee.

11.3 If the Customer has agreed to pay the Damage Waiver Fee, the Customer's liability in respect of each occurrence of loss or damage to the Equipment will be limited to paying EquipmentShare an excess in accordance with clause 11.5 immediately on demand and EquipmentShare waives its rights to bring a claim against the Customer for any occurrence of loss or damage to the Equipment

during the Rental Period unless the loss or damage is not covered under clause 11.4 (in which case clause 11.6 will apply) (**Damage Waiver**).

11.4 The Damage Waiver does not cover any loss, damage, liability or costs to the Equipment directly or indirectly caused by, arising from or in any connected with:

- (a) fines or penalties, exemplary, aggravated or punitive damages, additional damages resulting from the multiplication of compensatory damages, liquidated damages;
- (b) use or operation of the Equipment by any person:
  - (i) underground;
  - (ii) for or in connection with asbestos, oil, gas or geothermal drilling or wells;
  - (iii) on a watercraft;
  - (iv) for an unlawful purpose;
- (c) the operation of the Equipment by any person:
  - (i) not qualified, unlicensed, not suitably licensed or not suitable experienced;
  - (ii) suffering from a physical or mental impairment of ability;
  - (iii) under the influence of or affected by substances, drugs or alcohol;
  - (iv) with a level of drugs or alcohol in the breath, blood or urine in excess of that permitted by law or the Customer's relevant policies to operate the Equipment; or
  - (v) who refused to provide or allow the taking of a sample of breath, blood or urine for testing by any relevant party, including the Customer, law enforcement or work site safety authorities.

This exclusion in (a) will not apply if the Customer proves that it did not consent to the Equipment being operated by that person, it complied with clause 12 and it was unaware, and could not reasonably have been aware of the matters in clauses (i) to (v) as applicable;

- (d) overloading of the Equipment, irrespective of the Customer's knowledge;
- (e) incorrect loading of the Equipment, irrespective of the Customer's knowledge;
- (f) operation of the Equipment while its load-measuring instruments or limiters are defective, inoperative or turned off, whether or not with the Customer's knowledge;
- (g) the failure of the Customer or a person operating the Equipment to service, maintain, use, or operate the Equipment strictly in compliance with systems and procedures imposed or recommended by the Manual (as defined in clause 12.1(c)), industry standards and manufacturer's and distributor's recommendations, manuals or guidelines, regardless of the Customer's knowledge;
- (h) acts or omissions of the Customer or any person operating the Equipment with the intent of causing or with reckless disregard to the risk of causing damage, injury or property damage to any person or property irrespective of the Customer's knowledge;
- (i) a lack of, inadequate or incorrect lubricant, coolant, oil, or other dry or liquid substance, irrespective of the Customer's knowledge;
- (j) tests or experiments imposing abnormal operating conditions on a machine, irrespective of the Customer's knowledge;
- (k) the application of a tool or process to any part of the Equipment during inspection, maintenance, servicing, modification or repair by the Customer; and
- (l) any act or omission by the Customer in breach of any of the Customer's representations or warranties set out in clause 12 of this Rental Agreement.

11.5 If a claim is made under the Damage Waiver, the Customer will pay to EquipmentShare an excess of \$5000.00 immediately on demand.

11.6 The Customer must fully indemnify EquipmentShare for the full cost of repair or replacement of the Equipment for any damage or loss caused during the Rental Period which is not covered by the Damage Waiver. For the purposes of this clause and clause 11.7(c)(i), the replacement value of the Equipment shall be the cost to replace the Equipment with a new machine of an equivalent type and model so far

as is possible, including any import duties and taxes, if applicable.

11.7 If the Customer is making their own insurance arrangements:

- (a) the Customer's insurance policy must note the interests of EquipmentShare as lessor of the Equipment, and the Equipment Owner as owner;
- (b) the insurance arrangements must be approved by EquipmentShare and its insurers;
- (c) the Customer warrants that their insurance policy meets the following requirements:
  - (i) the Equipment will be insured for its full insurable replacement value (which shall be notified to the Customer by EquipmentShare upon request);
  - (ii) the Customer will be insured against public liability to property or persons caused by the Customer or by the use of the Equipment for the duration of the Rental Period;
- (d) the Customer will punctually pay all premiums and costs payable for the insurance and will comply with all requirements under the policy;
- (e) any excess payable under the insurance policy will be paid by the Customer on demand;
- (f) the Customer will apply all insurance proceeds recovered and in the Customer's control to the repair or replacement of the Equipment as directed by EquipmentShare in its sole discretion. The Customer will not apply any proceeds recovered to any other property or purpose without first obtaining written consent from EquipmentShare;
- (g) the Customer accepts all liability and will fully indemnify EquipmentShare for all costs, losses, and damages to the Equipment including loss of ability to re-hire the Equipment and loss of revenue and any loss of or damage to vehicles and property of third parties arising during the Rental Period regardless of whether their insurer covers or pays out these costs; and
- (h) the Customer will provide EquipmentShare with all documentation requested by EquipmentShare to establish that the insurance held is satisfactory including a Certificate of Insurance and/or Letter of Endorsement verifying that the Customer holds and carries policies meeting the above criteria and containing the specified endorsements.

## 12 CUSTOMER'S REPRESENTATIONS AND WARRANTIES

12.1 The Customer represents and warrants that:

- (a) the Customer is qualified to operate the Equipment and has obtained all necessary licenses, certifications, credentials, and permits required for operation of the Equipment;
- (b) the Customer will ensure anyone operating or using the Equipment is:
  - (i) qualified and adequately experienced to operate or use the Equipment;
  - (ii) provided with suitable training in the Equipment's operation or use before operating or using it;
  - (iii) not suffering from a physical or mental impairment of ability to operate or use it;
  - (iv) not consuming or under the influence of any alcohol, drugs or other substances that impair their ability whilst operating the Equipment; and
  - (v) only operating the Equipment under the Customer's direct supervision;
- (c) the Customer is familiar with and will operate and use the Equipment for its intended use only in accordance with the manufacturer's specifications for the Equipment as contained in the manufacturer's operation and maintenance manual or other similar use guidelines, conditions or requirements made available to the Customer for the Equipment by EquipmentShare (**Manual**) and in accordance with good practice and any applicable industry standards or guidelines (including from WorkSafe NZ), legislation, regulations and bylaws and the Customer will ensure that anyone using or engaging in the operation of the Equipment will so comply;
- (d) if a logbook is provided with the Equipment, the Customer will complete all required entries in the log book during the Rental Period;
- (e) the Customer will notify EquipmentShare immediately when the

Equipment is due for service in line with the Manual or any notification located on or within the Equipment or logbook (if a logbook has been provided) and will make the Equipment available for EquipmentShare to perform such servicing;

- (f) the Customer will at all times take all reasonable precautions to prevent any loss or damage to the Equipment and will not use the Equipment in a manner that is likely to result in anything other than ordinary wear and tear of the Equipment;
- (g) the Customer is capable of and qualified to inspect the Equipment to determine its condition, state of repair, whether it is in good working order, safe to use and suitable for Customer's intended use and the Customer will perform such an inspection on every occasion and undertake all pre-start checks required in the Manual before attempting to use the Equipment. If any issues are found during any inspection or pre-start check, the Customer will cease using the Equipment and notify EquipmentShare; and
- (h) the Customer has read and understood these Rental Terms and Conditions.

12.2 The Customer will not do anything which may have an adverse impact upon EquipmentShare's reputation or business either during the Rental Period or following completion of the Rental Period.

### 13 INFRINGEMENT FEES

13.1 The Customer will be responsible for payment of all fines and infringements incurred for the Equipment during the Rental Period including but not limited to:

- (a) parking in any portion of a road in breach of any by-law of a road controlling authority;
- (b) a speeding offence;
- (c) failure to comply with traffic signals;
- (d) toll offences; and
- (e) offences related to loading and unsafe loads.

### 14 INFORMATION AND PRIVACY

14.1 EquipmentShare may at any time collect, hold and use information relating to a Credit Account Application or any other information provided by the Customer including information relating to the Guarantor(s) for any purpose connected with its business including (but not limited to) direct marketing, debt recovery, credit reporting or assessment, and to register any security interest, including collecting information from, and disclosing information to, external credit reporting agencies, debt collection agencies and trade referees. Information disclosed by EquipmentShare to credit reporting agencies will be disclosed on the basis that it will be held and used by such agencies to provide credit reporting services. Under the Privacy Act 1993, individuals have rights to access to, and request correction of, their personal information by contacting EquipmentShare.

14.2 EquipmentShare may disclose personal information collected about the Customer, its references or the Guarantor(s) to any credit reporting agency for the purpose of obtaining a credit report.

14.3 The Customer, any person signing on behalf of the Customer and any Guarantor(s) each authorise EquipmentShare to collect, hold and use information from any person or entity for any of the above purposes, and for such person or entity to disclose information to EquipmentShare, and the Customer further authorises EquipmentShare to disclose information to any person or entity for any of the above purposes and such person or entity to collect, hold and use information from EquipmentShare.

### 15 TERMINATION OF THE RENTAL AGREEMENT

15.1 EquipmentShare may terminate this Rental Agreement with immediate effect by written notice to the Customer if;

- (a) the Customer is in breach of any term of this Rental Agreement or any other agreement between the Customer and EquipmentShare;
- (b) the Customer, being a company suffers an Insolvency Event;
- (c) the Customer, being an individual is adjudicated bankrupt; or
- (d) EquipmentShare believes in its sole discretion that the Equipment might be at risk.

15.2 EquipmentShare may terminate this Rental Agreement at any time on 48 hours prior written notice to the Customer.

15.3 Upon termination of this Agreement under clause 15.1 or 15.2:

- (a) the Customer expressly authorises EquipmentShare and its agents to enter onto the Job Site or any other location where the Equipment is stored to collect the Equipment without notice

and to use such force as required;

- (b) EquipmentShare is entitled to appoint any person or persons to be receiver of all or any of the Customer. A receiver has (in addition to the powers conferred by the Receiverships Act 1993, at law or otherwise and except to the extent expressly excluded by his or her terms of appointment) all the powers in relation to the Collateral to do anything the Customer (or a person with absolute ownership of the Collateral and carrying on the business for its own benefit) could do and to exercise such powers on such terms and conditions as the receiver thinks fit;
- (c) the Customer shall deliver up the Equipment to EquipmentShare by providing EquipmentShare with reasonable and clear access to the Job Site to enable collection of the Equipment; and
- (d) the Customer will pay:
  - (i) all Rental Payments due to EquipmentShare at the date of termination; and
  - (ii) if the Agreement has been terminated in accordance with clause 15.1, the balance of all Rental Payments yet to accrue from the date of termination to the end date of the Rental Period (if an end date has been specified in the Order Form).

### 16 NOTICES

16.1 Any notice to be given pursuant to the terms of this Rental Agreement will be in writing addressed to the party to whom it is given and left at or sent by e-mail or post to the address of such party as it may from time to time notify to the other and shall be deemed to be served on the day so left or transmitted by e-mail or on the third Business Day after it is so posted.

### 17 DEFINITIONS AND INTERPRETATION

#### 17.1 Definitions

In this Rental Agreement, unless the context otherwise requires:

- (a) **"Business Day"** means a day which is not a Saturday, Sunday or public or bank holiday in Auckland, New Zealand;
- (b) **"Credit Account Customer"** means a Customer who has their Credit Account Application approved by EquipmentShare under clause 7.
- (c) **"Credit Account Application"** means the credit account application completed by the Customer and the Guarantor(s).
- (d) **"Damage Waiver"** has the meaning given to that term in clause 11.3;
- (e) **"Damage Waiver Fee"** has the meaning given to that term in clause 3.5(a);
- (f) **"Equipment"** means the Equipment described in the Order Form and any further equipment rented to the Equipment Owner by EquipmentShare in the future;
- (g) **"Equipment Owner"** means the legal owner of the Equipment, being either EquipmentShare or a person who has granted EquipmentShare the right to rent the Equipment to third parties;
- (h) **"EquipmentShare"** means Sarsfield Engineering Limited (5715831), a licensee of EquipmentShare.com Inc, a Delaware Corporation of Delaware, United States of America;
- (i) **"Guarantor"** means the Guarantor listed in the Credit Account Application or in the Order Form or any person who has agreed to guarantee the obligations of the Customer under this Rental Agreement in writing.
- (j) **"Insolvency Event"** means where the Customer is a company any of the following events:
  - (i) an order is made, resolution passed or legal proceedings issued or corporate action is taken, notice given or other step taken for the dissolution of the Customer;
  - (ii) a liquidator, receiver, manager, statutory manager, inspector, trustee or other similar person is appointed in respect of the Customer or some or all of its assets;
  - (iii) any distress, attachment, or execution is levied, issued, enforced or obtained on or against all or substantially all of the Customer's assets; or
  - (iv) any security over the assets of the Customer is enforced.
- (k) **"Machine Hour"** means each hour of use of the machine as recorded in the Equipment's electronic records;

- (l) **"Customer"** means the party named as the customer in the Order Form or pursuant to a Credit Account Application and includes the Customer's representatives, officers, employees, contractors and agents.

## 17.2 Interpretation

In this Rental Agreement, unless the context otherwise requires:

- (a) a word denoting the singular includes the plural and vice versa;
- (b) A word or term defined in the Goods and Services Tax Act 1985 has the same meaning in these Rental Terms and Conditions where used in connection with GST imposed under that Act.
- (c) any reference to a statute or statutory provision shall be deemed to include any statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and any other orders, regulations, instruments or other subordinate legislation made thereunder;
- (d) all references to "\$" and "dollars" are to the lawful currency of New Zealand;
- (e) specifying anything after the words "including", "includes" or "for example" or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (f) a provision must not be construed against a party merely because that party was responsible for preparing this document or that provision.

## 18 MISCELLANEOUS

- 18.1 **Entire Agreement:** The Rental Agreement contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in the Rental Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of the Rental Agreement. The parties have not relied on any representation, warranty or agreement relating to the matters dealt with in the Rental Agreement that is not expressly set out in the Rental Agreement, and no such representation, warranty or agreement has any effect from the date of the Rental Agreement.
- 18.2 **Variation:** EquipmentShare shall be entitled to amend these Rental Terms and Conditions at its sole discretion upon notice in writing to the Customer. The terms of the amended Rental Terms and Conditions will apply to all Equipment in the Customer's possession and any new equipment rented from the date of the notice and the Customer's continued rental of the Equipment and/or subsequent rentals of new equipment shall constitute acceptance of the amended Rental Terms and Conditions.
- 18.3 **Assignment:** EquipmentShare may assign, transfer or novate this Rental Agreement or any of its rights and obligations under this Rental Agreement to any third party. The Customer may only assign its rights and obligations under this Rental Agreement with the written consent of EquipmentShare.
- 18.4 **Severability:** If a provision or part of a provision of the Rental Agreement is held invalid, unenforceable or illegal for any reason, then such provision or part, as the case may be, shall be deemed to be severed from the Rental Agreement and the Rental Agreement shall otherwise remain in full force.
- 18.5 **Consumer Guarantees Act 1993 (CGA) and Fair Trading Act 1986 (FTA)**
  - (a) Subject to clause 18.5(b), where the CGA and/or the FTA apply nothing in these Rental Terms and Conditions shall contract out of or limit the application of those Acts.
  - (b) Where the Customer is "in trade" within the meaning of the FTA or the CGA (as the case may be), EquipmentShare and the Customer agree to contract out of the CGA and sections 9, 12A, 13 and 14 of the FTA provided that both parties acknowledge that the effectiveness of contracting out of the Acts is subject to compliance with the statutory tests including that it is fair and reasonable that the Customer is bound by this clause 18.5(b).
  - (c) Where the customer is not "in trade" within the meaning of the FTA or CGA (as the case may be), the provision of clause 18.5(b) will have no effect and the full provisions of the CGA and the FTA will apply.
- 18.6 **Jurisdiction and Governing Law:** These Rental Terms and Conditions are governed by and construed in accordance with the laws of New Zealand and the parties to this Rental Agreement submit to the jurisdiction of the New Zealand courts.