

EQUIPMENTSHARE (NZ) RENTAL TERMS & CONDITIONS

SARFIELD ENGINEERING LIMITED (5715831)

Sarsfield Engineering Limited is a licensee of EquipmentShare.com Inc.

IT IS AGREED as follows:

1. AGREEMENT

- 1.1 EquipmentShare agrees to rent the Equipment to the Customer for the Rental Period (as set out in clause 2.1) on the terms and subject to the conditions set out in this Agreement.
- 1.2 The Customer will pay the Rental Payment to EquipmentShare in accordance with clause 3.
- 1.3 The Customer acknowledges and agrees that the Terms of Use and Privacy Policy published on the equipmentsshare.co.nz website form part of this Agreement and are binding on the Customer.

2. RENTAL PERIOD

- 2.1 The Rental Period ("Rental Period") will begin 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 2.2 or 2.3;
 - (b) The date that the Agreement is terminated under clause 16; or
 - (c) The date that is 364 days after the Delivery Date.
- 2.2 EquipmentShare will collect the Equipment from the Customer either:
 - (a) if no Pick up Date is listed in the Schedule, within 3 Business Days of receipt of a telephone call or text from the Customer requesting pickup of the Equipment; or
 - (b) if a Pick up Date is listed in the Schedule on the Pick up Date.
- 2.3 EquipmentShare may determine at any time during the Rental Period that the Equipment cannot be collected in accordance with clause 2.2 and will advise the Customer of this. EquipmentShare will advise the Customer of an alternative date for pick up of the Equipment. The failure of EquipmentShare to collect the Equipment in accordance with clause 2.2 will not be a breach of this Agreement and will not alter the Rental Period.
- 2.4 Notwithstanding clause 2.2, if EquipmentShare has provided their prior written consent, the Customer may return the Equipment to EquipmentShare at the address provided above.

3. RENTAL PAYMENT

- 3.1 The Rental Payment for the Equipment will be based on the length of the Rental Period and will be the lesser of the following amounts:
 - (a) The number of days in the Rental Period multiplied by the daily rate listed in the Rental Payment Details; and
 - (b) The sum of:
 - (i) The number of full 7 day periods within the Rental Period multiplied by the weekly rate listed in the Rental Payment Details; plus
 - (ii) The remaining number of days in the Rental period after subtracting the time in (i) multiplied by the daily rate listed in the Rental Payment Details; and
 - (c) The sum of:
 - (i) The number of 28 day periods the Equipment is in the Customer's possession multiplied by the monthly rate listed in the Rental Payment Details; plus
 - (ii) The remaining number of full 7 day periods within the Rental Period after subtracting (i) multiplied by the weekly rate listed in the Rental Payment Details; plus
 - (iii) The remaining number of days in the Rental period after subtracting the time in (i) and (ii) multiplied by the daily rate listed in the Rental Payment Details;plus GST and any Additional Costs payable under clause 3.3.
- 3.2 If the Rental Payment Details provide for a Machine Hour Rate and a minimum number of machine hours for the Rental Period, clause 3.1, will not apply and the Rental Payment will be the greater of:
 - (i) The minimum number of machine hours listed in the Rental Payment Details multiplied by the Machine Hour Rate; and

- (ii) The Machine Hours recorded for the Rental Period multiplied by the Machine Hour Rate;
plus GST and any Additional Costs payable under clause 3.3.

3.3 Additional Costs include:

- (a) Insurance Costs;
- (b) Delivery 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 pickup or delivery.
- (c) Fuel Charges of 200% of the fuel cost to EquipmentShare for fuel for Equipment returned with less fuel 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.
- (e) damage or repair of the Equipment,
- (f) traffic fines, infringement fees; and
- (g) administration or enforcement (including legal) costs in relation to any of the above costs.

3.4 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.

3.5 The rates listed in the Rental Payment Details do not include GST and the Customer will be responsible for payment of GST on top of those rates.

3.6 EquipmentShare will invoice the Customer monthly in arrears for Rental Payments or part Rental Payments accumulated during each month.

3.7 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 2% per month.

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

3.9 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 on the date listed in the Schedule, but the time of delivery shall not be treated as a condition of this Agreement. To the fullest extent permitted by law, and subject to clause 19.6(a) of this Agreement, EquipmentShare will not be liable in any way to the Customer or any other party for loss resulting from delay.

4.2 Delivery will occur when EquipmentShare delivers the Equipment to the Jobsite at which point the Equipment shall be at the sole risk of the Customer. EquipmentShare shall not be liable for any damage to the Equipment once risk has passed.

4.3 All Equipment should be checked by the Customer on receipt and any discrepancies or damage must be reported to EquipmentShare within two (2) working days of delivery of the Equipment to the Customer.

4.4 The Customer will provide EquipmentShare with reasonable access to the Jobsite to enable delivery of the Equipment.

4.5 Where the Customer is a Credit Account Customer as defined in clause 7.2 this Agreement is not binding on EquipmentShare and the Equipment will not be delivered to the Customer until the Credit Account application has been completed by the Customer and approved by EquipmentShare.

4.6 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 listed in the Schedule at all times during the Rental Period;

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 will not be moved from the Job Site during the Rental Period without EquipmentShare's prior written consent. The Customer may request permission from EquipmentShare to use or store the Equipment at a location(s) other than the Job Site by sending an email to info@EquipmentShare.co.nz;

- 5.4 The Equipment shall either be kept separate from other Equipment at the Jobsite or labelled in such a way so that the Equipment is easily identifiable as belonging to Equipment Share.
- 5.5 Despite delivery of the Equipment to the Customer, and passing of risk, and possession of Equipment to the Customer, title to the Equipment is retained 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 clauses 6 apply and the provisions of clause 7 and 8 do not apply.
- 6.2 Unless otherwise agreed with EquipmentShare, the Customer must pay to EquipmentShare all amounts invoiced under clause 3.6 electronically in cleared funds without any set off or deduction within 7 days of the date of each invoice.
- 6.3 EquipmentShare may in their 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 their sole discretion require a hold on the Customer’s credit card to secure payments due to EquipmentShare under this Agreement. If EquipmentShare requires this 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 increased;
 - (c) If EquipmentShare is unable to place 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 responsible for any costs (including legal costs), claims, damages, expenses or 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 The Customer may apply for a Credit Account with EquipmentShare by completing the online application with 1Centre.
- 7.2 If EquipmentShare approves the Customer’s Credit Account application:
- (a) EquipmentShare will confirm their approval to the Customer;
 - (b) EquipmentShare will approve a credit limit for the Customer and advise the Customer of this limit. The limit must not be exceeded.
 - (c) The limit under (b) 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.
 - (d) The Customer will arrange for the rental of further equipment from EquipmentShare by submitting a request to EquipmentShare in writing, on the terms of this agreement.
 - (e) The Customer will not be required to complete a further Credit Account application for additional equipment unless the credit required for the equipment will exceed the Customer’s approved credit limit.
 - (f) The terms of this Agreement will be binding on the Customer with respect to all equipment rented from EquipmentShare or agreed to be rented from EquipmentShare in the future.
 - (g) EquipmentShare will invoice the Customer on the last working day of each month for Rental Payments accumulated within that month or following return of the Equipment under clause 4.6.
 - (h) The Customer must pay all amounts invoiced under clause (g) 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 This clause only applies to Credit Account Customers.
- 8.2 The Customer grants to EquipmentShare a security interest in 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;

(the “Secured Property”).

- 8.3 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.
- 8.4 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.
- 8.5 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:
- (a) 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;
 - (b) to the extent permitted by law, this Agreement excludes any other provisions of the PPSA which may be excluded in EquipmentShare discretion and which would otherwise confer rights on the Customer; and
 - (c) where EquipmentShare has rights in addition to Part 9 of the PPSA, those rights will continue to apply.
- 8.6 The Customer will:
- (a) not change its name, address or contact details without providing EquipmentShare with 14 days prior written notice.
 - (b) not give EquipmentShare a written demand, or allow any other person to give EquipmentShare a written demand requiring a financing change statement to be registered;
 - (c) 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
 - (d) provide any information which EquipmentShare reasonably requires to complete a financing statement or a financing Change Statement.
- 8.7 The Customer will, upon demand, pay all EquipmentShare’s expenses and legal costs (on a solicitor-client basis) in relation to or in connection with the registration, maintenance and enforcement of EquipmentShare’s security interest.
- 8.8 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 NZ 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.
- 8.9 EquipmentShare is not required to monitor, enforce or apply its rights under the security interest created in this clause 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 maximum aggregate liability of EquipmentShare under or in connection with this Agreement whether in contract, tort (including negligence) breach of Statutory duty or otherwise must not exceed the Rental Payments paid and/or payable by the Customer under this Agreement.
- 9.2 Risk in the Equipment will pass to the Customer upon delivery of the Equipment to the Job Site or on collection of the Equipment by the Customer from EquipmentShare and will remain with the Customer for the duration of the Rental Period.
- 9.3 The Customer is liable for:
- (a) any loss of, or damage to, the Equipment during the Rental Period;
 - (b) 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
 - (c) any loss of, or damage to, property of any third party caused by or in relation to the operation of the Equipment.

10. DAMAGE AND ACCIDENTS

- 10.1 If the Equipment is damaged during the Rental Period, the Customer must report the damage to EquipmentShare as soon as possible and in any case within 24 hours of becoming aware of the damage.

- 10.2 If the damage is the result of equipment malfunction (as determined by EquipmentShare in its sole discretion), EquipmentShare will, if possible, repair the Equipment or replace the Equipment with similar equipment.
- 10.3 Except as otherwise provided in this Agreement, the Customer will be solely responsible for any glass and panel damage to the Equipment and any damage beyond ordinary wear and tear.
- 10.4 EquipmentShare has no obligation to repair or replace Equipment that was damaged due to misuse, abuse, or neglect.
- 10.5 The Customer's sole remedy for any failure or defect in Equipment shall be the termination of any rental charges accrued during the time the Customer was not able to use the Equipment due to the failure or defect.
- 10.6 If the Equipment is involved in an accident on the road during the Rental Period, the Customer must:
- (a) inform the police immediately;
 - (b) record the:
 - (i) registration number of any other vehicles involved.
 - (ii) name, driver license number and address of any other drivers involved
 - (iii) name and address of any witnesses;
 - (c) contact EquipmentShare immediately, and provide them with the details in (b)(b);
 - (d) not make any admission of liability; and
 - (e) not arrange or carry out any repair work to the Equipment without EquipmentShare's prior written consent.

11. DAMAGE WAIVER AND INDEMNITIES

- 11.1 Damage Waiver
- (a) Damage Waiver is not insurance, it is an agreement with EquipmentShare that the Customer's liability for damages or theft of Equipment can be limited to an amount called the Damage Waiver Excess in some circumstances only.
 - (b) The Customer must purchase a Damage Waiver from EquipmentShare for the duration of the Rental Period unless EquipmentShare has agreed to the Customer making their own insurance arrangements and provided a valid insurance certificate as proof of rental insurance cover for the Equipment.
 - (c) Damage Waiver applies to all hires, and is subject to the below terms
 - (i) If Equipment is damaged or stolen the Customer will pay to EquipmentShare the Damage Waiver Excess payments immediately on demand
 - (ii) The Damage Waiver Excess is the actual repair, replacement, and recovery cost of the equipment, or up to \$2500, whichever is lesser.
 - (d) Damage Waiver DOES NOT APPLY and WILL NOT limit the customer's liability in the following circumstances;
 - (i) Where the operator is affected by alcohol and/or drugs
 - (ii) Where the operator is not suitably licenced
 - (iii) Where the Equipment has been wilfully damaged by the Customer or its employees or agents
 - (iv) Where the Customer has failed to take reasonable care of the Equipment (including overloading of any motors or other electrical devices, or damage due to lack of lubrication or other normal servicing of the equipment)
 - (v) Where the damage is caused in any way by overloading
 - (vi) In the event of theft where the Customer has failed to keep the equipment locked or secured in a suitable location.
 - (vii) Where the customer fails to notify EquipmentShare within 12 hours of the Customer first becoming aware of the event of damage or theft
- 11.2 If the Customer has their own insurance arrangements and applies to opt out of the Damage Waiver:
- (a) The Customer's insurance policy must note the interests of EquipmentShare as lessor of the Equipment, and the Equipment Owner;
 - (b) The insurance arrangements must be approved by EquipmentShare, their creditors and 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;
 - (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 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;
- 11.3 The Customer indemnifies 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 EquipmentShare's insurance policy.
- 11.4 If EquipmentShare is deprived of the benefit of any insurance money due to the act, omission, negligence or default of the Customer the Customer will pay to EquipmentShare all amounts that would be otherwise payable to EquipmentShare under an insurance policy.
- 11.5 To the 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.

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) only persons qualified to operate the Equipment will operate the Equipment under the Customer's direct supervision;
 - (c) the Customer will use the Equipment for its intended use only in accordance with the manufacturer's specifications, any use guidelines, conditions or requirements available for the Equipment and in accordance with good practice and any applicable industry standards or guidelines (including from WorkSafe NZ), legislation, regulations and bylaws;
 - (d) the Customer or any other persons operating the Equipment will not consume or be under the influence of any alcohol or illegal drugs whilst operating the Equipment;
 - (e) the Customer is familiar with the manufacturer's specifications for the Equipment as contained in the manufacturer's operation and maintenance manual or other similar guide or manual provided to the Customer with the Equipment "the Manual";
 - (f) if a logbook is provided with the Equipment, the Customer will complete all required entries in the log book during the Rental Period;
 - (g) the Customer is qualified and able to perform any routine maintenance required or recommended in the Manual, and will perform, at Customer's expense, any such required or recommended maintenance in the manner and at the intervals specified or recommended by the manufacturer or required by EquipmentShare in its sole discretion;
 - (h) the Customer will not use the Equipment in a manner that is likely to result in anything other than ordinary wear and tear of the Equipment;
 - (i) 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 that Customer will perform such an inspection on every occasion before attempting to use the Equipment;
 - (j) if at any time the Equipment is involved in an accident, suffers a malfunction, becomes unsafe, or is damaged the Customer will immediately cease using the Equipment and notify EquipmentShare;
 - (k) the Customer will take all practical steps to comply with all applicable Health and Safety legislation, regulations, site rules and site procedures when in possession of the Equipment; and
 - (l) the Customer has read and understood EquipmentShare's Terms of Use and Privacy Policy and agrees to be bound by them.
- 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. EQUIPMENTSHARE'S REPRESENTATIONS AND WARRANTIES

- 13.1 The only warranties given by EquipmentShare are the express written 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).

14. INFRINGEMENT FEES

- 14.1 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.

15. PRIVACY

- 15.1 EquipmentShare and 1centre Limited may at any time collect, hold and use information relating to a Credit Account Application including information relating to the Guarantor 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.
- 15.2 EquipmentShare may disclose personal information collected about the Customer, its references or the Guarantor to 1centre or to a credit reporting agency for the purpose of obtaining a credit report.
- 15.3 The Customer, any director signing on behalf of the Customer and any Guarantor authorises 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.

16. TERMINATION OF THE RENTAL AGREEMENT

- 16.1 EquipmentShare may terminate this Agreement with immediate effect by written notice to the Customer if;
- (a) the Customer is in breach of any term of this 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.
- 16.2 EquipmentShare may terminate this Agreement at any time on 48 Hours written notice to the Customer.
- 16.3 Upon termination of this Agreement under clause 16.1 or 16.2:
- (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 repossess 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 Goods. 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 Goods to do anything the Business Consumer (or a person with absolute ownership of the Goods 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) shall deliver up the Equipment to EquipmentShare in accordance with clause 4.1; 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 16.1, the balance of all Rental Payments yet to accrue from the date of termination to the expiry of the term of this Agreement.
- 16.4 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 Agreement, or otherwise in connection with the exercise or attempted exercise of any of EquipmentShare's rights or remedies under the Agreement.
- 16.5 On termination of this Agreement the Customer shall return to EquipmentShare all of EquipmentShare's property and confidential information in its possession.

17. GUARANTEE

- 17.1 In consideration of EquipmentShare agreeing to supply the Customer with the Equipment and/or agreeing to provide credit to the Customer at the request of the Guarantor, the Guarantor or if more than one the Guarantor jointly and severally:
- (a) absolutely and unconditionally guarantees the due and punctual performance by the Customer of their obligations under this Agreement to EquipmentShare; and
 - (b) unconditionally as a separate and independent obligation indemnifies EquipmentShare and agrees to keep EquipmentShare indemnified against any loss which EquipmentShare may suffer arising out of or in relation to a default by the Customer of this Agreement and the Guarantor will upon demand pay to EquipmentShare the aforesaid moneys or the amount of any loss which is the subject of this indemnity.
- 17.2 It is further declared that:
- (a) The liability of the Customer under this clause shall not in any way be prejudiced or affected by any act matter or thing, failure or omission which, but for this provision, might operate to exclude the Guarantor from the aforesaid obligations including, without limitation, by:
 - (i) the granting of time or other indulgence or concession to the Customer, the Guarantor or any other person or corporation;
 - (ii) compounding or compromising with or releasing or discharging the Customer, the Guarantor or any other person or corporation from liability under this clause or from compliance with the provisions of this clause as the same may be varied, amended, novated, replaced or renewed from time to time, or releasing, varying or renewing in whole or in part any security, document of title, asset or right held by EquipmentShare;
 - (iii) the bankruptcy, death, lunacy, disability or other incapacity of the Customer, the Guarantor or any other person or company;
 - (iv) the Customer or Guarantor suffering an Insolvency Event;
 - (v) EquipmentShare or any other person or corporation taking or failing to take a guarantee or indemnity from any other person or corporation;
 - (vi) a judgement obtained by EquipmentShare against the Customer or the Guarantor;
 - (vii) any amendment to, novation or replacement, of this clause or this Agreement with or without the consent of the parties;
 - (viii) the failure by EquipmentShare to give notice to the Guarantor of any default by the Customer under this clause;
 - (ix) the liability of the Customer under this clause ceasing for any reason.
 - (b) The aforesaid obligations of the Guarantor are principal obligations and may be enforced against the Guarantor without the necessity of EquipmentShare first taking action against the Customer in respect of the Customer's obligations under this clause and notwithstanding the termination or completion of this clause.
 - (c) This Guarantor agrees to waive each and all of its rights as Guarantor whether legal, equitable, statutory or otherwise which may at any time be inconsistent with the provisions of this clause or which in any way restricts EquipmentShare's rights, remedies or recourse.
 - (d) This clause is a continuing guarantee and indemnity and shall remain in full force and effect until those obligations have been met in full by the Customer.
 - (e) The Guarantor shall not without first obtaining EquipmentShare's consent take action to enforce any rights against the Customer for money paid by the Guarantor to EquipmentShare under this clause, or prove in the liquidation of the Customer, or exercise any other rights, in competition with EquipmentShare.
 - (f) Where there is more than one Guarantor, the covenants and agreements on their part contained or implied in this Agreement bind them jointly and each of them severally.

18. NOTICES

How to give a notice

All notices and communications given under the Agreement must be in writing and must be delivered personally, sent by post or sent by email to the address or email address set out in the Schedule (or at such other address as notified from time to time by the party in writing changing its address).

When a notice is given

A notice, consent or other communication that complies with this clause 17 is regarded as given and received:

- (a) if it is given personally, at the time it is given;
- (b) if it is delivered or sent by fax or email:

- (i) by 5.00 pm (local time in the place of receipt) on a Business Day, on that day; or
- (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day, on the next Business Day; and
- (c) if it is sent by mail, 3 days after mailing (or 7 days after mailing if sent to or from a place outside New Zealand).

19. DEFINITIONS AND INTERPRETATION

19.1 Definitions

In this Agreement, unless the context otherwise requires:

- (a) **"1centre system"** means the online credit account application system hosted by 1centre.com and owned by 1centre Limited through which the Customer applies for a credit account with EquipmentShare.
- (b) **"Agreement"** means this agreement (including the recitals, schedules, appendices, annexures and exhibits to it) as it may later be amended or supplanted by the parties in writing;
- (c) **"Business Day"** means a day which is not a Saturday, Sunday or public or bank holiday in New Zealand;
- (d) **"Claim"** means any claim, demand, legal proceedings or cause of action including any claim, demand, legal proceedings or cause of action:
 - (i) based in contract (including breach of Warranty);
 - (ii) based in tort (including misrepresentation or negligence);
 - (iii) under common law; or
 - (iv) under statute,in any way relating to this Agreement and includes a claim, demand, legal proceedings or cause of action arising from a breach of Warranty or under an indemnity in this Agreement;
- (e) **"Credit Account Customer"** means a Customer who has their Credit Account Application approved by EquipmentShare under clause 7.
- (f) **"Credit Account Application"** means the credit account application completed by the Customer and its trade reference(s) and Guarantors using the online 1centre system.
- (g) **"Delivery Charges"** means the delivery charges listed in the Schedule;
- (h) **"Equipment"** means the Equipment described in the Schedule and any further equipment rented to the Equipment Owner by EquipmentShare in the future;
- (i) **"Equipment Owner"** means the legal owner of the Equipment who has entered into an agreement;
- (j) **"EquipmentShare"** means Sarsfield Engineering Limited (5715831), a licensee of EquipmentShare.com Inc, a Delaware Corporation of Delaware, United States of America;
- (k) **"Expenses"** means expenses specified in of the Schedule and any other expenses agreed in advance by EquipmentShare ("**Expenses**").
- (l) **"Guarantor"** means the Guarantor listed in the Credit Account Application or in the Schedule or any person who has agreed to guarantee the obligations of the Customer under this Agreement in writing.
- (m) **"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 (other than a proceeding which, in the reasonable opinion of the Investor, is vexatious or frivolous), 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.
- (n) **"Insurance Costs"** means the insurance costs payable to EquipmentShare by the Customer as set out in the Schedule.
- (o) **"Loss"** means all losses, liabilities, damages, costs, charges, expenses and includes taxes, duties and costs and expenses in connection with a tax or duty;
- (p) **"Machine Hour"** means each hour of use of the machine as recorded in the Equipment's electronic records;

- (q) "**Obligation**" means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;
- (r) "**Pick up Date**" means the date which EquipmentShare has agreed in writing to pick up the Equipment;
- (s) "**PPSA**" means the Personal Property Securities Act 1999;
- (t) "**Rental Payment Details**" means the rental payment details and rates listed in the Schedule;
- (u) "**Customer**" means the party named in customer billing information in the Schedule and includes that party's employees and agents;
- (v) "**Right**" includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action; and
- (w) "**Schedule**" means the Schedule containing the customer billing information and description of equipment appearing at the beginning of this Agreement.

19.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a word denoting the singular includes the plural and vice versa;
- (b) a word denoting an individual or person includes a corporation, firm, authority, government body and vice versa;
- (c) a word denoting one gender includes all genders;
- (d) all references to clauses, recitals, schedules, annexures and appendices are to clauses of and recitals, schedules, annexures and appendices to this document;
- (e) a reference to an agreement or document is to that agreement or document (and, where applicable, any of its provisions) as varied, novated, supplemented or replaced from time to time;
- (f) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (g) a reference to a thing is a reference to the whole or any part of it, and a reference to a group of things is a reference to any one or more of them;
- (h) A word or term defined in the Goods and Services Tax Act 1985 has the same meaning in these Conditions where used in connection with GST imposed under that Act.
- (i) 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;
- (j) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (k) all reference to dates and times are to New Zealand time;
- (l) all references to "\$" and "dollars" are to the lawful currency of New Zealand;
- (m) if a payment or other act is required by this document to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day;
- (n) 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;
- (o) a provision must not be construed against a party merely because that party was responsible for preparing this document or that provision; and
- (p) headings are for convenience of reference only and do not affect interpretation.

20. MISCELLANEOUS

20.1 Entire Agreement

The Agreement contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in the Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of the Agreement. The parties have not relied on any representation, warranty or agreement relating to the matters dealt with in the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the date of the Agreement. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A, and 13 of the Fair Trading Act 1986.

20.2 Variation

20.3 EquipmentShare shall be entitled to amend this Agreement at its sole discretion upon 30 days' notice in writing to the Customer. The terms of the amended Agreement will apply to all Equipment in the Customers possession and any new Equipment rented from the expiry of the 30 day notice period.

20.4 Waiver

No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by EquipmentShare of that or any other right or remedy available to it. No provision of the Agreement shall be deemed to be waived by EquipmentShare except by express written consent.

20.5 Assignment

(a) This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

(b) EquipmentShare may assign, licence, transfer or novate the Agreement or any of its rights and obligations to any third party.

(c) The Customer may only assign its rights and obligations or appoint an agent or subcontractor to perform its obligations under this Agreement with the written consent of EquipmentShare.

20.6 Severability

If a provision or part of a provision of the 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 Agreement and the Agreement shall otherwise remain in full force.

20.7 Consumer Guarantees Act and Fair Trading Act

(a) To the extent that the Consumer Guarantees Act applies nothing in this Agreement limits the Customer's rights under the Consumer Guarantees Act unless it would be fair and reasonable to do so;

(b) The Customer is acquiring the Equipment for business purposes, and accordingly, subject to clause (a), to the fullest extent permitted by law and solely to the extent it is fair and reasonable:

(i) the Consumer Guarantees Act 1993 does not apply to the supply of the Equipment; and

(ii) the Customer will notify EquipmentShare of any change in ownership, control, status, or management of the Customer.

(c) EquipmentShare's liability to the Customer under the Fair Trading Act 1986 is limited to the fullest extent permitted by law, the Customer agrees that it is fair and reasonable that the parties are bound by the provisions in this Agreement.

20.8 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this Agreement.

20.9 Jurisdiction and Governing Law

This Agreement is to be governed and construed in accordance with the laws of New Zealand and the parties to this Agreement submit to the jurisdiction of the New Zealand courts.

20.10 Time of Essence

Time is of the essence of the performance of each of the obligations under this Agreement.

20.11 Cumulative Rights

The powers of a party under this Agreement are cumulative and do not exclude any other right, power, authority, discretion or remedy of that party.

20.12 Liability of parties

If any party to this Agreement consists of more than one person then the liability of those persons under this Agreement is a joint liability of all those persons and a separate liability of each of them.

20.13 Counterparts

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

20.14 Non-merger

A provision of this Agreement which can, and is intended to, operate after the termination of this Agreement remains effective after Completion.

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