

HG Group of Companies – Terms and Conditions of Trade

1. Definitions

“HG Group” means HG Group Limited, Attach2 Limited and Equip2 Limited, and their successors and assigns or any person acting on behalf of and with the authority of these entities.

“Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting HG Group to provide the Equipment for hire and/or purchase as specified in any proposal, quotation, invoice, order, authorisation, or other documentation, and:

- (a) if there is more than one Client is a reference to each Client jointly and severally;
- (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Client’s executors, administrators, successors and permitted assigns.

“Term” means in respect to a hire of equipment contract the period from and including the Commencement Date (specified in the hire of equipment contract) and ending on and including the end Date (specified in the hire of equipment contract), and as described on any invoice, quotation, or any other form as provided by HG Group to the Client. In the event that there is no Term specified, the parties expressly agree that the Term of this Agreement is a term of 12 months less one day from the Commencement Date.

“Equipment” means all Equipment (including but not limited to, chattels, machinery and plant including all fittings accessories, tool and parts) supplied on hire by HG Group 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, equipment hire contract, or any other authorisation form provided by HG Group to the Client.

“Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by HG Group to the Client.

“Trade Customers” are only those Client’s whom HG Group has agreed is currently entitled to trade credit terms.

“Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the purchase of the Equipment or the hire charges payable for the hire of the Equipment, as agreed between HG Group and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions once the Client has signed and accepted this contract, or any other associated forms or documentation.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and HG Group.
- 2.3 None of HG Group’s agents or representatives are authorised to make any representations, statements, conditions or contracts not expressed by the Manager of HG Group in writing, nor is HG Group bound by any such unauthorised statements.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.5 Where the Contract is signed by a person on behalf of the Client (but the signatory is not the Client named in the Contract) then the following provisions shall take effect:
 - (a) the person signing the Contract warrants to HG Group that he or she has the full authority of the Client to enter into this Contract; and
 - (b) the person signing this Contract on behalf of the Client shall remain personally liable hereunder until all obligations of the Client have been fully met or any monies due hereunder paid by the Client to HG Group; and
 - (c) the person signing this Contract on behalf of the Client acknowledges that HG Group enters into this Contract in reliance upon the warranty given in clause 2.5(a) and the acknowledgement of personal liability set out in clause 2.5(b) herein.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that HG Group 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 HG Group in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by HG Group 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 wilful misconduct of HG Group; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give HG Group 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 in trustees, or business practice). The Client shall be liable for any loss incurred by HG Group as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At HG Group’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by HG Group to the Client;
 - (b) the hire charges current at the date of delivery of the Equipment and calculated according to HG Group’s rates as shown on HG Group’s current rate guide. Unless there is a contrary agreement in writing between HG Group and the Client, cartage, fuel, blade wear (mole plough, aerator), knife wear (chippers, augers, mulchers), chisel wear (breakers, etc.), tip wear (rippers, cultivators, etc.) as set out in the current product information documentation and being measured by HG Group and assessed at HG Group’s discretion, along with all saleable and consumable items are extra and not included in the hire charges. HG Group reserves the right to revise product information and related charges from time to time without notice to the Client. The Client acknowledges that the rate guide is that which is available at HG Group’s premises where the hiring took place and that the Client has had every opportunity to check the rates applicable. Whether or not the Client has checked those rates is the Client’s responsibility and whether the Client does so is entirely at the Client’s discretion; or
 - (c) HG Group’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 thirty (30) days.
 - 5.2 HG Group reserves the right to change the Price in the event of a variation to HG Group’s quotation. Any variation from the plan of scheduled Services or specifications of the Equipment beyond HG Group’s control (including, but not limited to, any variation as a result of increases to HG Group in the cost of labour, materials or overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which will be charged for on the basis of HG Group’s quotation, and will be detailed in writing, and shown as variations on HG Group’s invoice. The Client shall be required to respond to any variation submitted by HG Group within ten (10) working days. Failure to do so will entitle HG Group 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.
 - 5.3 Except where HG Group dispenses with this requirement, a deposit/bond may be required, the amount of which shall be specified in the contract at HG Group’s discretion and shall become due and payable on the Client’s acceptance of this contract (as per clause 2.1).
 - 5.4 Payment of the Price for the Equipment by the Client will be on the date/s determined by HG Group, which may be:
 - (a) for “Trade Customers”: the twenty-first (21st) day of the month following invoice (this includes any hire charges for completed hire periods or other charges starting the preceding month. Each hire period shall comprise the actual Contract Hire Term, or successive monthly periods of hire, whichever is shorter); or
 - (b) for “Non Trade Customers”:
 - (i) (hire of Equipment): on the date when the Equipment is returned to HG Group’s premises or within seven (7) days of the commencement of the Contract Hire Term, whichever is earlier. Where the Contract Hire Term is extended to more than seven (7) days then the hire charges shall be payable at the end of each seven (7) day period in respect of the prior seven (7) days and at on return of the Equipment, in respect of the hire period not previously paid for.
 - (ii) (purchase of Equipment): failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by HG Group.
 - 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and HG Group.
 - 5.6 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 HG Group nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to HG Group an amount equal to any GST HG Group must pay for any supply by HG Group under this or any other contract for the sale/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.
 - 5.8 The Client accepts and agrees HG Group has right of recovery, and in the event of a liquidation where payments have been made in accordance with normal business practice and as set out herein, such payment shall not be regarded as preferential.
- ## 6. Delivery of Equipment
- 6.1 Delivery (“Delivery”) of the Equipment is taken to occur at the time that:
 - (a) the Client or the Client’s nominated carrier takes possession of the Equipment at HG Group’s address; or
 - (b) HG Group (or HG Group’s nominated carrier) delivers the Equipment to the Client’s nominated address even if the Client is not present at the address.
 - 6.2 At HG Group’s sole discretion, the cost of delivery is in addition to the Price.
 - 6.3 The Client shall take delivery of the Equipment tendered notwithstanding that the specifications may differ from the specifications originally agreed to, provided that the Price shall be adjusted pro rata to the discrepancy.
 - 6.4 HG Group may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.5 Any time specified by HG Group for delivery of the Equipment is an estimate only. The Client must take delivery by receipt or collection of the Equipment whenever they are tendered for delivery. HG Group will not be liable for any loss or damage incurred by the Client as a result of delivery being late.

7. Risk

- 7.1 Even where HG Group retains property in the Equipment in accordance with clause 8.2(a), all risk of damage to or loss of the Equipment passes to the Client on delivery and the Client must insure the Equipment on or before delivery.
- 7.2 If any of the Equipment is damaged or destroyed following delivery but prior to ownership passing to the Client, HG Group is entitled to receive all insurance proceeds payable for the Equipment. The production of these terms and conditions by HG Group is sufficient evidence of HG Group's rights to receive the insurance proceeds without the need for any person dealing with HG Group to make further enquiries.

8. Title

8.1 Where this is a hire of equipment contract:

- (a) the Equipment is and will at all times remain the absolute property of HG Group, however the Client accepts full responsibility for:
 - (i) the safekeeping of the Equipment and indemnifies HG Group 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; and
 - (ii) shall keep HG Group indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the Contract Hire Term and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- (b) the Client will insure, or self-insure, HG Group'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 permit an insurer to decline any claim.
- (c) if the Client fails to return the Equipment to HG Group then HG Group or Group'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.
- (d) the Client is not authorised to pledge HG Group's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

8.2 Where this is a contract for the purchase of the Equipment:

- (a) HG Group and the Client agree that ownership of the Equipment shall not pass until:
 - (i) the Client has paid HG Group all amounts owing to HG Group; and
 - (ii) the Client has met all of its other obligations to HG Group.
- (b) Receipt by HG Group 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.
- (c) It is further agreed that:
 - (i) until ownership of the Equipment passes to the Client in accordance with clause 8.2(a) that the Client is only a Bailee of the Equipment and must return the Equipment to HG Group on request.
 - (ii) the Client holds the benefit of the Client's insurance of the Equipment on trust for HG Group and must pay to HG Group the proceeds of any insurance in the event of the Equipment being lost, damaged or destroyed.
 - (iii) the Client must not sell, dispose, or otherwise part with possession of the Equipment other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Equipment then the Client must hold the proceeds of any such act on trust for HG Group and must pay or deliver the proceeds to HG Group on demand.
 - (iv) the Client should not convert or process the Equipment or intermix them with other Equipment but if the Client does so then the Client holds the resulting product on trust for the benefit of HG Group and must sell, dispose of or return the resulting product to HG Group as it so directs.
 - (v) the Client irrevocably authorises HG Group to enter any premises where HG Group believes the Equipment are kept and recover possession of the Equipment, and the Client agrees to indemnify HG Group against any claims, damages or expenses made against or incurred by HG Group arising out of any enforcement of this clause.
 - (vi) HG Group may recover possession of any Equipment in transit whether or not delivery has occurred.
 - (vii) the Client shall not charge or grant an encumbrance over the Equipment nor grant nor otherwise give away any interest in the Equipment while they remain the property of HG Group.
 - (viii) HG Group may commence proceedings to recover the Price of the Equipment sold notwithstanding that ownership of the Equipment has not passed to the Client.

9. Personal Property Securities Act 1999 ("PPSA")

9.1 If this Agreement creates a security interest (notwithstanding the definition of Term), this agreement creates a security agreement for the purposes of the Personal Property Securities Act 1999, and the following clauses apply. Unless

otherwise defined in this agreement (including these Trade Conditions), all terms in this clause 9 have the meaning given to them in the PPSA and section references are sections to sections of the PPSA.

9.2 The Client agrees that the hire of Equipment, and/or the purchase of Equipment, creates a security interest in the Equipment and their proceeds (which will have priority over all other security interests in the Equipment), to secure the full payment of all moneys payable to HG Group and the performance by the Client of all of its obligations to HG Group.

9.3 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 HG Group may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) correct a defect in a statement referred to in clause 9.3(a);
- (c) indemnify, and upon demand reimburse, HG Group for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
- (d) not register a financing change statement in respect of a security interest without the prior written consent of HG Group; and
- (e) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of HG Group;
- (f) immediately advise HG Group of any material change in its business practices of selling Equipment which would result in a change in the nature of proceeds derived from such sales.

9.4 The Customer:

- (a) Acknowledges that where HG Group has rights in addition to, or existing separately from those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by Section 109 of the PPSA;
- (b) Waives any rights it may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, 134 and 148 of the PPSA;
- (c) Waives its right to receive a copy of the Verification Statement or a Financing Change Statement relating to any Security Interest created by this Agreement.

9.5 In addition to the provisions provided for hereinunder, if the Equipment that HG Group has a Security Interest in is processed, included or dealt with in any way causing it to become accessioned, processed or comingled, HG Group's Security Interest will continue in the whole in which it is included.

9.6 Nothing in this clause 9 affects rights of HG Group as an unpaid seller in relation to Equipment purchased from HG Group.

9.7 The Client shall unconditionally ratify any actions taken by HG Group under clauses 9.1 to 9.6.

9.8 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

10.1 In consideration of HG Group agreeing to supply the 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, 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).

10.2 The Client indemnifies HG Group from and against all HG Group's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HG Group's rights under this clause.

10.3 The Client irrevocably appoints HG Group and each director of HG Group as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

11. Business Purposes

11.1 If the Client purchases/hires or holds itself out as purchasing/hiring the Equipment for the purposes of a business or in another way which is not ordinarily used by a consumer (as defined in the Consumer Guarantees Act 1993), then the Client agrees to the following terms:

- (a) the conditions warranties and guarantees set out in the Contract and Commercial Law Act 2017 and the Consumer Guarantees Act 1993 or implied by the common law will not apply and are excluded from this contract and in particular no warranty is made by HG Group concerning the performance, specifications, or capacity of the Equipment;
- (b) the Client may not claim on any remedies set out in the Consumer Guarantees Act 1993 from HG Group, or the manufacturer of the Equipment, or from any manufacturer of the components or parts in the Equipment;
- (c) HG Group's liability shall be limited to the cost of replacement or repair (at HG Group's sole discretion) of any Equipment it considers reasonable upon inspection to be defective (subject to clause 12.1 herein);
- (d) HG Group shall not be responsible to the Client or to third parties for any damage that may be done by HG Group's delivery and collection vehicle or HG Group's servants or agents on effecting delivery and/or collection of the Equipment;
- (e) Notwithstanding clause 11.1(c) herein, HG Group and its employees contractors and agents and any manufacturer(s) of the Equipment, will not be liable to the Client for any loss or damage however the loss or damage arises. This exclusion of liability includes but is not limited to, consequential loss or damage caused by, or arising from breakdown of the Equipment, delays in manufacturing or delivery, faulty installation, unreasonable use, negligence (including a failure to do something that may have prevented a failure), faulty specifications and design, and faulty

material, equipment or component parts in the Equipment. The exclusion also includes costs incurred in returning the Equipment to HG Group or to any manufacturer;

- (f) the Client indemnifies HG Group against all claims whatsoever arising from the purchase and/or hire of the Equipment.

12. Defects and Returns

- 12.1 The Client shall inspect the Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify HG Group of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford HG Group an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment are defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which HG Group has agreed in writing that the Client is entitled to reject, HG Group's liability is limited to either (at HG Group's discretion) replacing the Equipment or repairing the Equipment.
- 12.2 Purchased Equipment will not be accepted for return for any reason other than those specified in clause 12.1 above, and provided that:
- (a) HG Group has agreed in writing to accept the return of the Equipment; and
 - (b) the Equipment is returned at the Client's cost within seven (7) days of the delivery date; and
 - (c) HG Group will not be liable for Equipment which has not been stored or used in a proper manner; and
 - (d) the Equipment is returned in the condition in which it was delivered (in as new condition as is reasonably possible in the circumstances).
- 12.3 HG Group may (in its discretion) accept the return of Equipment for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Equipment plus any freight.
- 12.4 In the case of Equipment hire, normal termination of Equipment hire in accordance with the terms and conditions herein shall apply..
- 12.5 Subject to clause 12.1, non-stocklist items or Equipment ordered or made to the Client's specifications are not acceptable for credit or return.

13. Warranty

- 13.1 For Equipment not manufactured by HG Group, the warranty shall be the current warranty provided by the manufacturer of the Equipment. HG Group shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Equipment.
- 13.2 In the case of second hand Equipment, the Client acknowledges that it has had full opportunity to inspect the same and that it accepts the same as is where is, and that no warranty is given by HG Group as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. HG Group shall not be responsible for any loss or damage to the Equipment, or caused by the Equipment, or any part thereof however arising.

14. Intellectual Property

- 14.1 The Client agrees that HG Group may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Equipment which HG Group has created for the Client.

15. Default and Consequences of Default

- 15.1 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 HG Group's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes HG Group any money the Client shall indemnify HG Group from and against all costs and disbursements incurred by HG Group in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HG Group's collection agency costs, and bank dishonour fees).
- 15.3 Further to any other rights or remedies HG Group may have under this contract, if a Client has made payment to HG Group, 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 HG Group under this clause 15 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.
- 15.4 Without prejudice to HG Group's other remedies at law HG Group shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HG Group shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to HG Group becomes overdue, or in HG Group'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 HG Group;
 - (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.

16. Cancellation

- 16.1 Where this is a contract for the hire of Equipment, and without prejudice to any other remedies HG Group may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions HG Group may suspend or terminate the hire of Equipment to the Client. HG Group will not be liable to the Client for any loss or damage the Client suffers because HG Group has exercised its rights under this clause.
- 16.2 Where this is a contract for the purchase of Equipment, and the Client cancels delivery of the Equipment, the Client shall be liable for any and all loss incurred (whether direct or indirect) by HG Group as a direct result of the cancellation (including, but not limited to, any loss of profits). If the cancellation of any order(s)

for Equipment is of Equipment made to the Client's specifications, or for non-stocklist items, HG Group will not accept the cancellation once production has commenced, or an order has been placed.

- 16.3 Notwithstanding clause 16.1 and 16.2 herein, HG Group may cancel any contract to which these terms and conditions apply or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice HG Group shall repay to the Client any money paid by the Client for the hire and/or purchase of the Equipment. HG Group shall not be liable for any loss or damage whatsoever arising from such cancellation.

17. Privacy Act 1993

- 17.1 The Client authorises HG Group or HG Group's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including 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 to the Client.
 - (b) disclose information about the Client, whether collected by HG Group from the Client directly or obtained by HG Group 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.
- 17.2 Where the Client is an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3 The Client shall have the right to request HG Group for a copy of the information about the Client retained by HG Group and the right to request HG Group to correct any incorrect information about the Client held by HG Group.

18. Service of Notices

- 18.1 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.
- 18.2 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.

19. Trusts

- 19.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not HG Group may have notice of the Trust, the Client covenants with HG Group as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust 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 or 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 without consent in writing of HG Group (HG Group 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 property.

20. General

- 20.1 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.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand.
- 20.3 Subject to the provisions of clause 12.1 herein, HG Group shall otherwise not be liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by HG Group of these terms and conditions (alternatively HG Group's liability shall be limited to damages which under no circumstances shall exceed the hire/purchase price of the Equipment).
- 20.4 HG Group may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent. The Client cannot licence or assign without the written approval of HG Group.
- 20.5 The Client agrees that HG Group may amend these terms and conditions by notifying 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 HG Group to provide Equipment to the Client.
- 20.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

20.7 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.

Terms & Conditions Applicable to Hire of Equipment Contracts

21. Contract Hire Term

21.1 Unless otherwise agreed in writing, the Client acknowledges and agrees that:

- (a) these Terms and Conditions shall be valid for the duration of the Term; and
- (b) there is no right of renewal of this hire of equipment contract.

21.2 Hire charges shall commence from the date and time the Equipment departs from HG Group's premises, and continue until the return of the Equipment to HG Group's premises, and/or until the expiry of the hire Term, whichever last occurs.

21.3 If the Equipment is not returned to HG Group's premises before the end of the specified equipment hire contract Term, then additional hire charges shall be payable by the Client.

21.4 Hire Charges are calculated as per the following:

- (a) business daily rate is chargeable for each ten (10) hour period of hire. Extra hours of hire will be charged additionally, pro rata, at a five (5) hour rate;
- (b) twenty-four (24) hour daily rate is chargeable for each twenty-four (24) hour period of hire. Extra hours of hire will be charged additionally, pro rata, at a five (5) hour rate;
- (c) weekly rate is chargeable for a duration of seven (7) days, or seven (7) consecutive twenty-four (24) hour periods. Extra days of hire will be charged additionally, pro rata at the weekly rate;
- (d) monthly rate is chargeable for hire with a minimum of twenty-nine (29) days. Extra days of hire will be charged additionally, pro rata, at the monthly rate.

21.5 Where hour meter/s mounted on the Equipment are used to determine the hire charges, this record of use shall be in addition to the terms determined in clauses 21.3 and 21.4. Hour charges shall be calculated to the nearest half hour above the visual reading on the meter/s. Where the recording device is found not to be working either during, or at the completion of, the Contract Hire Term then HG Group will estimate the hours used and the onus is on the Client to prove otherwise.

21.6 Should HG Group agree with the Client to collect the Equipment:

- (a) hire charges shall continue until HG Group is notified by the Client that the Equipment is available for collection. Notification shall constitute suspension of hire, providing notification is given by the Client in time for the Equipment to be picked up and returned to HG Groups premises by the required return time on the day the hire ceases. The required return times are no later than 5:30pm on weekdays, or by arrangement on weekends or Public Holidays, or such earlier time as the Contract Hire Term may terminate. In the event insufficient notice is given, the Client may at HG Group's discretion be charged an extra five (5) hours of hire.
- (b) if there are any delays due to free access not being available, the Client shall be responsible and shall reimburse the Client for all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by HG Group due to delays in access to the Equipment.

21.7 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless prior special arrangements are confirmed in writing by HG Group. In the event of Equipment breakdown (provided the Client notifies HG Group immediately and obtains an "OFF-HIRE" number as verification), 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.

22. Client's Responsibilities

22.1 The Client shall:

- (a) notify HG Group 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;
- (b) use the Equipment properly and for the purpose for which it was designed acknowledging HG Group gives no warranty as the "Equipment's" capacity;
- (c) ensure only competent and qualified drivers and operators are given charge of the Equipment while in the Client's possession and shall be responsible for all cleaning, lubrication and operating adjustments and for any damage occurring due to overloading mistakes or neglect in handling, operation etc. during the Contract Hire Term;
- (d) at their own expense clean and keep the Equipment in good and substantial repair and condition and proper working order and pay all costs for replacements or repair required due to fire, theft, accident, loss, or otherwise 25.3 during the Contract Hire Term, provided the Client shall not undertake any repair or servicing and if any repair or servicing appears desirable shall notify HG Group immediately. On termination of the hire, the Client shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to HG Group. The Client is not authorised to pledge HG Group's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs;
- (e) provide all petrol, fuel, oil, cleaning and other materials and labour required for the operation of the Equipment and only fuel and lubricating oils approved by HG Group shall be used. The Client shall check fuel and oil and other levels every day before starting up the Equipment;
- (f) 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 and the Client accepts full responsibility for the safekeeping of the Equipment and indemnifies HG Group 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;

- (g) accept full responsibility for and indemnify HG Group against all claims in respect of any injury to persons or damage to property arising out of the use of the Equipment during the Contract Hire Term however arising, whether from the negligence of the Client or any other persons including but without limitation where the Equipment is being operated for any reason by HG Group their servants or agents;
- (h) not 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;
- (i) accept full responsibility associated with any costs or liability due to the Equipment obstructing any person/s. The Client shall also accept full responsibility associated with any costs or liability due to the Equipment being in a location that it shouldn't be or if the equipment or HG Group incurs any fines, towage or seizure costs or impoundment costs while the Equipment is in the custody of the Client;
- (j) immediately on request by HG Group, the Client shall advise HG Group of the whereabouts of the Equipment and allow HG Group (it's agents, servants or contractors) to inspect and test the Equipment and for such purposes the Client hereby gives irrevocable leave and licence to HG Group to take possession of and remove the same as agent of the Client, and to enter upon any premises where the Equipment (or any part of the same) may be;
- (k) accept full responsibility in compliance with all current codes of practice and regulations, including the Health and Safety at Work Act 2015, current licences such as time licences and road user charges where necessary;
- (l) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
- (m) not exceed the recommended or legal load and capacity limits of the Equipment;
- (n) not use or carry any illegal, prohibited, or dangerous substance in, or on, the Equipment;
- (o) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- (p) ensure that all persons operating or erecting 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;
- (q) satisfy itself prior to taking delivery that the Equipment is suitable for its purposes.

22.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies HG Group 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.

22.3 The Client will insure, or self-insure, HG Group'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 permit an insurer to decline any claim. The Client accepts full responsibility for and shall keep HG Group 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 Contract Hire Term however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

22.4 Immediately upon request by HG Group the Client will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to HG Group;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
- (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in HG Group's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
- (f) any lost hire fees HG Group would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
- (g) the cost of fuels and consumables provided by HG Group and used by the Client.

23. HG Group's Right to Terminate

23.1 Without prejudice to any other remedies available to HG Group, and notwithstanding any period of hire specified, HG Group may terminate this hire contract without payment of compensation and without notice if the Client shall commit any breach of these hire contract terms and conditions or the Client commits any act of bankruptcy or being a company an application is made or a resolution is passed for its winding up or being a company a receiver of their assets or any of them is appointed or if any execution or distress shall be levied upon the Equipment or if any judgement against the Client shall remain unsatisfied for seven (7) days or more or if the Client makes an assignment or compromise for the benefit of their creditors or being a company is placed under statutory management or if it ceases to carry on business. Upon the termination of the Contract Hire Term, the Client is obligated to return the Equipment to HG Group on demand thereof, and failing such return, HG Group (it's agents, servants or contractors) shall be entitled to take possession of the Equipment as per clause 8.1(c).

24. Equipment Damage

24.1 Subject to the operation of clauses 22.2 and 22.3 herein, the Client is responsible for any loss or damage occurring to the Equipment (other than damage arising as a consequence of a breach by HG Group of the guarantees provided by the Consumer Guarantees Act (CGA)) from the time the Client takes possession of the Equipment until it is returned to the possession of HG Group. The cost of any replacement or repairs resulting from loss or damage will be charged to, and payable by, the Client. The Client shall notify HG Group immediately if the Equipment is lost or damaged and shall immediately follow any reasonable request by HG Group relating to HG Group's enquiries into the loss and/or damage to the Equipment.

If the Client has:

- (a) notified HG Group, in writing, of the full circumstances leading to the loss or damage to the Equipment within twenty-four (24) hours of the loss or damage; and
- (b) in the case of loss or damage caused by arson, vandalism, collision, accident, theft or burglary, lodged either, a full written complaint with the Police, and/or prepared an independent report as required by HG Group within twenty-four (24) hours of the loss or damage, and provided HG Group with a copy of such complaint and/or report, and can establish, to HG Group's reasonable satisfaction, that adequate precautions were taken by the Client to ensure that any loss of or damage to the Equipment was not incurred due to negligence or carelessness of the Client; then HG Group can, in its sole discretion waive the Client's liability for loss or damage. Notwithstanding the provisions of clause 22.2 herein, the Client will be liable for the full cost of repairs to, or the replacement of, the Equipment where the loss or damage has been caused by:-

- (i) misuse, abuse, or overloading, including overloading of motors or any other part of the Equipment;
- (ii) mysterious disappearance or wrongful conversion, including where Equipment is not reasonably locked and secured;
- (iii) contravention of the conditions of this contract;
- (iv) violation of any law or regulation;
- (v) damage to tyres and tubes by punctures or cuts;
- (vi) lack of lubrication, or other routine servicing by the Client;
- (vii) locating, using, loading, unloading, or transporting the Equipment on or over water, wharves, bridges or vessels of any kind;
- (viii) damage caused by exposure to any corrosive substance;
- (ix) negligence of the Client where the Client has failed by intent or lack of due care to take all responsible precautions to protect the Equipment from loss or damage;
- (x) consumption of alcohol and/or drugs;
- (xi) loss or damage to tools, grease guns, hoses electric cords and all other similar accessories;
- (xii) any combination of the foregoing.

25 Wet Hire

25.1 In the event of "wet" hire of Equipment the operator of the Equipment remains an employee of HG Group and operates the Equipment in accordance with the Client's instructions. As such HG Group shall not be liable for any actions of the operator in following the Client's instructions.