

NC HIRE LTD TRADE ACCOUNT APPLICATION

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

DATE: _____

CLIENT'S TRADE NAME: _____

CLIENT'S FULL or LEGAL NAME: _____

Phone: _____ Mobile: _____

Email: _____

Postal Address: _____ Physical Address: _____

_____ Postcode: _____ Postcode: _____

COMMERCIAL CLIENTS ONLY

Company Number: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER / PARTNERS / DIRECTORS / TRUSTEES

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

_____ Postcode _____ Postcode _____

ID: _____ Date of Birth: _____ ID: _____ Date of Birth: _____

(Driver's Licence, Passport, etc.)

(Driver's Licence, Passport, etc.)

Home Phone: _____ Home Phone: _____

ACCOUNTS PAYABLE DETAILS

The Accounts payable person: Name _____ Phone _____ Email _____

Email: (for invoices to be sent to if different from above) _____

Requested Credit Limit: _____

TRADE REFERENCES

Business Name 1: _____ Phone: _____

Business Name 2: _____ Phone: _____

Business Name 3: _____ Phone: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of NC Hire Limited which form part of and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.**

SIGNED (CLIENT): _____ SIGNED (SUPPLIER): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

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YOUR FIRST CHOICE
FOR EQUIPMENT RENTAL & SALES



Access

Construction

Agriculture

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of NC Hire Limited and its successors and assigns ("the Supplier") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

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

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

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

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to the Supplier by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Supplier's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to the Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
6. If any payment received or recovered by the Supplier is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Supplier shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to the Supplier.**
9. I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
10. The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1
SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

GUARANTOR-2
SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

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

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NC Hire Limited – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
 - 1.2 "Supplier" means NC Hire Limited, its successors and assigns or any person acting on behalf of and with the authority of NC Hire Limited.
 - 1.3 "Client" means the persons, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
 - 1.4 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
 - 1.5 "Equipment" means all Equipment including any accessories and attachments supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
 - 1.6 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
 - 1.7 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
 - 1.8 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
 - 1.9 "Charge" means the Charge payable for the Goods/Equipment hire as agreed between the Supplier and the Client in accordance with clause 7 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 if the Client places an order for or accepts delivery of the Goods/Equipment.
 - 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
 - 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
 - 2.4 The Supplier warrants that Goods/Equipment supplied shall meet all relevant safety regulations and standards. The Client acknowledges receipt of the Supplier's operating/safety guidelines, and agrees to follow the guidelines therein. The Client further acknowledges that the Supplier accepts no responsibility for any loss, damage or injury which may be incurred as a result of the Client's failure to follow the safety/operating guidelines provided by the Supplier.
 - 2.5 The Client acknowledges and accepts that:
 - (a) the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Goods/Equipment exceeds the Client credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery and/or request an alternative payment method.
 - 2.6 The Client agrees to accurately complete and sign the Credit Card Authorisation Form, the contents of which shall form part of this agreement, thereby, consenting to the Supplier, that in the event that the Client becomes in default of payment for any reason, then the Supplier reserves the right to automatically debit the Client's credit card.
 - 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Sections 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
 - 3.1 The Client acknowledges and accepts that the Supplier 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 the Supplier 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 the Supplier in respect of the Services.
 - 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Supplier; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Authorised Representatives**
 - 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any employee and/or third party to the Supplier as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods/Equipment or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative). In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
 - 4.2 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) or providing any Services, Goods/Equipment or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).
 - 4.3 Furthermore, the Client agrees to notify the Supplier in writing immediately upon the departure of the Client's employee/representative, if an authorised account user.
 - 4.4 Failure to advise the Supplier of such departures, then the Client acknowledges they will be bound by all purchase orders made by that account user.
 - 4.2 **Finance**

If this agreement is conditional upon the Client obtaining a loan from a financial institution then they must provide the Supplier with written confirmation of the loan approval before the Supplier will commence any Goods.
 - 4.3 **Change in Control**

The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
 - 4.4 **Charge and Payment**

At the Supplier's sole discretion the Charge shall be either:
 - (a) as indicated on any invoice provided by the Supplier to the Client; or
 - (b) the Charge as at the date of delivery of the Goods/Equipment according to the Supplier's current price list; or
 - (c) the Supplier's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for period specified on the quotation.The Supplier reserves the right to change the Charge if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specification of Goods (including, but not limited to, availability of machinery or as a result of any increase to the Supplier's in the cost of materials and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Charge. Payment for all variations must be made in full at their time of completion.

At the Supplier's sole discretion a non-refundable deposit may be required.

Time for payment for the Goods/Equipment being of the essence, the Charge will be payable by the Client on the date/s determined by the Supplier, which may be:
 - (a) for certain approved Clients operating a trade account with the Supplier, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (b) for non-trade Clients, a credit card authorisation form shall be completed and payments will be debited from the credit card details provided on generation of invoices and/or for the deposit of the Goods/Equipment;
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.Payment may be made by bank cheque, electronic/online banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Supplier.

The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods.The Client shall not be entitled to set off against, or deduct from the Charge, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.Unless otherwise stated the Charge does not include GST. In addition to the Charge the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charge. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Charge except where they are expressly included in the Charge.
 - 4.5 **Credit Card Information**

The Supplier will:
 - (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by the Supplier;
 - (b) not disclose the Client's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 20) or where required by law.The Client expressly agrees that the Supplier is entitled to immediately charge the Client's nominated credit card for all amounts owing and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Agreement, should the Client have:
 - (a) any untd charged by the Supplier;
 - (b) other amounts due and outstanding by the Client;
 - (c) any Goods (or any part of them) supplied on hire that are lost or damaged; and
 - 4.6 any other additional charges are due from the Client which were not known at the time of the return of the Goods.
 - 4.7 **Delivery of Goods/Equipment**

Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or
 - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.At the Supplier's sole discretion, the cost of Delivery is either included in the Charge or is in addition to the Charge.

The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

Where there is no agreement that the Supplier shall send the Goods/Equipment to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.

The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

Delivery of the Goods/Equipment to a third party nominated by the Client shall be deemed to be delivery to the Client for the purposes of this agreement.

Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
 - 4.8 **Risk to Goods**

Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds with the exception of any person dealing with the Supplier to make further enquiries.

If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
 - 4.9 **Title to Goods**

The Supplier and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Supplier all amounts owing to the Supplier; and
 - (b) the Client has met all of its other obligations to the Supplier.Receipt by the Supplier 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.

It is further agreed that:
 - (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
 - (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
 - (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
 - (h) the Supplier may commence proceedings to recover the Charge of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
 - 4.10 **Personal Property Securities Act 1999 ("PPSA")**

Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms or conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) the provisions of clause 11 apply; and
 - (c) a security interest is taken in all Goods/Equipment previously supplied by the Supplier to the Client (if any) and all Goods/Equipment that will be supplied in the future by the Supplier to the Client.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 the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement or a change of priority without the prior written consent of the Supplier; and
 - (d) immediately advise the Supplier of any material change in its business practices of selling Goods
 - 4.11 which would result in a change in the nature of proceeds derived from such sales.
 - 4.12 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 4.13 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 4.14 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Client shall unconditionally ratify any actions taken by the Supplier under clauses 12.1 to 12.5.
 - 4.15 **Security and Charge**

In consideration of the Supplier agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
 - 4.16 **Consumer Guarantees Act 1993**

This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
 - 4.17 **Defects**

The Client shall inspect the Goods/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
 - 4.18 **Returns Of Goods**

Returns of Goods will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 15.1; and
 - (b) the Supplier has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
 - (d) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
 - 4.19 Non-stock items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
 - 4.20 **Warranty**

The conditions applicable to any accepted warranty claim are:
 - (a) all warranty claims must first be accepted by the manufacturer and/or the Supplier prior to any work being commenced under such claim, with the claim procedure being:
 - (i) that the Client notifies and discusses the issue with the Supplier's customer services team;
 - (ii) the Supplier will seek authorisation from the manufacturer or provider (where applicable) to ascertain the quickest and most efficient repair method;
 - (iii) on approval to proceed, the Supplier will arrange with the Client as to repair location and any associated costs of salvage, pickup, or onsite repair;
 - (iv) on completion of the repair, the Supplier shall seek approval from the Client to sign off any necessary documentation.
 - (b) the Goods are to be returned to the Supplier for service or repair. Where the Supplier agrees to onsite servicing, pickup or delivery, the Supplier shall reserve the right to charge for associated costs;
 - (c) the Supplier shall not be held liable for any loss of production, income, costs, losses or damages arising from the time the Goods are out of service under a warranty claim;
 - (d) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (e) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
 - (f) in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or repairing the Goods or in properly assessing the Client's claim.
 - 4.21 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
 - 4.22 In the case of some second hand Goods, the Client acknowledges that they have had full opportunity to inspect the same and that he accepts the same with all

NC Hire Limited – Terms & Conditions of Trade

<p>faults and that the warranty given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising. Where at the Supplier's sole discretion, a ninety (90) day warranty is applied to certain second hand Goods, such warranty shall be noted on the sales invoice or docket and will apply only to the major components of the Goods with any replacement component being warranted for the balance of the original warranty period.</p> <p>17.4 Excluded from the warranty are the following:</p> <ol style="list-style-type: none"> (a) any blade sharpening, extensive cleaning or repairs resulting from heavy use; (b) replacement consumables including, but not limited to, tyres, oils, fuel, lubricants, etc.; (c) any Goods that are used for rental or hire purposes; (d) components on second hand Goods including, but not limited to, panels, guards, hand rails, lenses, decals, etc.; (e) components on any Goods that are damaged as a result of impact or hard use including, but not limited to, worn bearings, cotter pins and retainers; (f) any defect resulting from general wear and tear such as may be seen to fabric, rubber grips, cushions, grease fittings, paint or steel surface or cosmetic imperfections; (g) damage from the improper adjustments including, but not limited to, cables, pulleys, loose wheel hubs, seals and handles; (h) any resultant damage from natural disasters, fire, abrasion or corrosion; (i) failure to maintain the Goods or perform periodic maintenance checks resulting in damage arising from the Goods being operated with inappropriate oil, water, lubricants or other fluid levels; (j) any damage occurring as the result of fitting spurious parts or lubricants, the incorrect use of attachments or tools, or modifications or alterations not authorised by the Supplier. <p>18. Default and Consequences of Default</p> <p>18.1 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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>18.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).</p> <p>18.3 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods/Equipment to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.</p> <p>18.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:</p> <ol style="list-style-type: none"> (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make payment when it falls due; (b) 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 (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client. <p>19. Cancellation</p> <p>19.1 The Supplier may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>19.2 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>19.3 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>20. Privacy Policy</p> <p>20.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements that are relevant in the European Economic Area ("EEA") then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.</p> <p>20.2 Notwithstanding clause 20.1, privacy limitations will extend to the Supplier in respect of Cookies where transactions for purchases/orders transpire directly from the Supplier's website. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:</p> <ol style="list-style-type: none"> (a) IP address, browser, email client type and other similar details; (b) tracking website usage and traffic; and 	<p>(c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")</p> <p>24. Hire Period</p> <p>24.1 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Client from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>24.2 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>24.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.</p> <p>24.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.</p> <p>24.5 Off-hire receipts will only be issued when the Equipment has been either collected by the Supplier, or returned to the Supplier's premises.</p> <p>25. After-Hours Drop Off Facility</p> <p>25.1 The Client acknowledges and accepts that:</p> <ol style="list-style-type: none"> (a) the after-hours drop off facility will be monitored by closed circuit cameras; (b) all drop off times are recorded. This shall be deemed as the end of the Hire Period in accordance with clause 24.1; (c) access codes provided by the Supplier to the Client shall not be divulged to other parties; and (d) emergency contact numbers will be displayed at the after-hours drop off facility. <p>26. Risk to Equipment</p> <p>26.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.</p> <p>26.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier 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.</p> <p>26.3 The Client agrees to arrange adequate Public Liability Insurance covering any loss, damage or injury to hired 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.</p> <p>26.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.</p> <p>27. Damage Waiver</p> <p>27.1 The Client shall pay for the damage waiver unless written confirmation of suitable insurance cover is provided to the Supplier, and such confirmation has been accepted and approved in writing by the Supplier (in its sole discretion), prior to the Client taking possession of the Equipment. The Client is not entering into a Contract for insurance with the Supplier by paying for the damage waiver.</p> <p>27.2 Subject to receipt by the Supplier of the excess (Clause 28) and except for the exclusions scheduled below (clauses 27.2(a) - 27.4) and if the Client has paid for the damage waiver, the Client shall not be liable to the Supplier for any loss of or damage to the hired Equipment or for any consequential loss or damage incurred by the Supplier and/or any other parties during the term of the hire PROVIDED THAT the Client:</p> <ol style="list-style-type: none"> (a) has at all times acted with reasonable care; (b) has delivered to the Supplier a detailed report on the event giving rise to the loss and/or damage of the hired Equipment, including the extent of any criminal act, police report and acknowledgement. The report and/or supporting documentation to be received by the Supplier within twenty four hours of the Client becoming aware of the loss and/or damage; and (c) has undertaken such action as the Supplier would have reasonably expected to enable the Supplier to recover such loss from any potentially responsible third parties. <p>27.3 The damage waiver does NOT cover:</p> <ol style="list-style-type: none"> (a) theft or criminal damage to Equipment unless reasonably secured; (b) damage or loss due to misuse, abuse or non-adherence to accepted load or towing tolerances; (c) damage resulting from overloading of electrical and/or motor capacity; (d) damage to tyres or tubes howsoever caused during the term of the hire; (e) damage or loss resulting from inadequate provision of lubricants or other servicing of the Equipment; (f) damage or loss to any of the accessories forming part of the hired Equipment including but not limited to tools, electrical cords, grease guns, hoses, welding cables, oxygen and/or acetylene bottles, and pneumatic tools; (g) damage or loss arising from water (including, but not limited to partial or full immersion of the Equipment not specifically designed for immersion); (h) damage or loss arising from breach by the Client of the conditions of the Hire agreement; (i) damage or loss from use of the Equipment in contravention of any Statute or By Law. <p>27.4 Special conditions or exclusions may also apply, details of which will be provided by the Supplier prior to the commencement of the hire. A breach of these special conditions will be considered a breach of the Contract.</p> <p>27.5 The Supplier and Client agree and acknowledge that Section 11 of the Insurance Law Reform Act 1977 will apply with respect to the exclusions in clause 27.2(a) - 27.4 inclusive as if clause 24 constituted a contract of insurance (notwithstanding that clause 24 is NOT a contract of insurance).</p>	<p>28. Excess</p> <p>28.1 Notwithstanding the payment of the damage waiver, in the event of any loss, damage, or theft of the Equipment which is covered by the damage waiver, the Client will pay an excess. The excess will be the actual cost of remedying the loss or damage OR limited to ten percent (10%) of the net of the new list price of the Equipment or \$3,000 plus GST for any one item as scheduled in the hire agreement whichever is the lower.</p> <p>29. Title to Equipment</p> <p>29.1 The Equipment is and will at all times remain the absolute property of the Supplier.</p> <p>29.2 If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier'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.</p> <p>29.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.</p> <p>30. Client's Responsibilities</p> <p>30.1 The Client shall:</p> <ol style="list-style-type: none"> (a) notify the Supplier 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) satisfy itself at commencement that the Equipment is suitable for its purposes; (c) have a system in place to check, detect, repair and report faults in the Equipment; (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier, demonstrated by the Supplier or posted on the Equipment; (e) 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 to operate the Equipment and shall provide evidence of the same to the Supplier upon request; (f) ensure that no member of the public is near the Equipment when it is being operated; (g) ensure that no children have access to or are near the Equipment regardless of whether or not the Equipment is in operation at the time; (h) ensure that all safety guards are in place and functioning at all times; (i) ensure that all Equipment operators wear appropriate tight clothing and have no loose hair or belts that could become entangled in the Equipment; (j) comply with all occupational health and safety laws relating to the Equipment and its operation; (k) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier; (l) 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; (m) 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; (n) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work; (o) not exceed the recommended or legal load and capacity limits of the Equipment; (p) adhering to the Supplier's instructions and load charts of the Equipment, where provided; (q) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment; (r) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold; (s) indemnify and hold harmless the Supplier in respect of all claims arising out of the Client's use of the Equipment. <p>30.2 Immediately on request by the Supplier the Client will pay:</p> <ol style="list-style-type: none"> (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier; (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) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement; (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client; (g) the cost of fuels and consumables provided by the Supplier and used by the Client. <p>31. Wet Hire</p> <p>31.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of the Supplier and operates the Equipment in accordance with the Client's instructions. As such the Supplier shall not be liable for any actions of the operator in following the Client's instructions.</p>
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