



## ACCOUNT APPLICATION FORM

*If you are seeking an account with earthquip ltd please complete all of section 1.  
If you require finance from Earthquip Group Ltd please complete both section 1  
and section 2.  
All parties must complete section 3*

### SECTION 1 - ACCOUNT DETAILS AND TRADING REQUIREMENTS

#### CUSTOMER DETAILS

TRADING NAME:

DATE:

REGISTERED COMPANY NAME:

REGISTERED COMPANY NO:

REGISTERED ADDRESS:

YEARS IN BUSINESS:

DELIVERY ADDRESS (If different)

POSTAL ADDRESS:

BUSINESS STRUCTURE:  
(Circle one)

Ltd Company

Sole Trader

Partnership

Trust

Limited Partnership

Other

CONTACT NAME:

TITLE:

MOBILE:

PH:

EMAIL:

ACCOUNTANT:

PH:

EMAIL:

SOLICITOR:

PH:

EMAIL:

#### INSURANCE (WHERE GOODS ARE HELD) (Circle one)

Limited Damage Waiver in accordance with clause 5.1 G (vii) Cost 10% of the hire charges  
(Earthquip Group Ltd reserves the right to decline Limited Damage waiver)

The Account Holder is to insure in accordance with clause 5.1 g (vi)  
Maximum excess \$5,000.00 unless otherwise agreed in writing by Earthquip Ltd  
(Certificate of Currency form attached)

#### OWNERS/DIRECTORS/ TRUSTEES DETAILS/TRADE REFERENCES

NAME:

PH:

DOB:

POSITION HELD:

DRIVERS LICENCE NO:

ADDRESS:

TIME AT RESIDENCE:

OWNED/RENTED:

PREVIOUS ADDRESS:

TIME AT RESIDENCE:

OWNED/RENTED:

NAME:

PH:

DOB:

POSITION HELD:

DRIVERS LICENCE NO:

ADDRESS:

TIME AT RESIDENCE:

OWNED/RENTED:

PREVIOUS ADDRESS:

TIME AT RESIDENCE:

OWNED/RENTED:

#### TRUST DETAILS

NAME OF TRUST (As per trust deed - please attach a copy)

#### TRADE REFERENCES

NAME:

PH:

CONTACT PERSON:

NAME:

PH:

CONTACT PERSON:

NAME:

PH:

CONTACT PERSON:



SECTION 3 - AUTHORITY

I/We hereby apply for credit, or wish to enter into such other agreement or arrangement with Earthquip Group Ltd, knowing that Earthquip Group Ltd is under no obligation to supply goods or services and that such credit may be withdrawn by Earthquip Group Ltd at any time in Earthquip Group Ltd sole and unfettered discretion, or such other agreement or arrangement may be cancelled by Earthquip Group Ltd in accordance with the terms of that agreement or arrangement. If my/our application is accepted by Earthquip Group Ltd

I/we agree to be bound by the attached Terms & Conditions and acknowledge that the Terms and Conditions may be changed from time to time by Earthquip Group Ltd by notice in writing and/or changed on the Earthquip Group Ltd website ([www.earthquip.co.nz](http://www.earthquip.co.nz))

I/we declare that the information supplied in this form is true and correct and that I/we have disclosed all information that may be material to Earthquip Group Ltd in assessing my/our application; and

Where the applicant is a company or other entity set out in Section 1 I am/we are authorised to make this application on behalf of the company or other entity and acknowledge that

I/we sign this application on behalf of the Account Holder and in my/our own capacity as Guarantor.

I/we confirm that I/we have been given a copy of the Terms and Conditions and have been further advised that a copy of the Terms and Conditions is available on the Earthquip Group Ltd website ([www.earthquip.co.nz](http://www.earthquip.co.nz))

the Account Holder, and/or on behalf of the Account Holder, by:

.....Print name/s ..... Date .....

Signature ..... Print name/s ..... Date .....

Signature ..... Print name/s ..... Date .....

SUPPORTING DOCUMENTS  
(Please circle)

FINANCIAL STATEMENTS (LAST YEARS)  
CASH FORECASTS

YEAR TO DATE FINANCIALS  
COPY OF DRIVERS LICENCE FOR EACH OWNER/DIRECTOR

TRUST DEED (if APPLICABLE)  
OTHERS

PERSONAL GUARANTEE

In consideration of all or any member of Earthquip Group Ltd agreeing to provide credit to sell goods to, or enter into a hire, lease of other agreement or arrangement with the Account Holder at my/our request:

1. I/we as the guarantor/s unconditionally guarantee to Earthquip Group Ltd the due and punctual payment by the Account Holder of all moneys payable and the due and punctual performance by the Account Holder of all obligations owed, whether in accordance with the attached Terms and Conditions or otherwise, to Earthquip Group Ltd
2. I/we indemnify Earthquip Group Ltd against any loss or damage Earthquip Group Ltd might suffer as a result of the Account Holders breach of these Terms and Conditions or otherwise should these Terms and Conditions or any other agreement between the parties becoming void or unenforceable by earth quip Ltd.
3. I/we agree that I/we are deemed as principal debtor for all accounts held by the Account Holder with Earthquip Group Ltd
4. I/we agree that this guarantee shall be a continuing guarantee and shall not be discharged by any settlement or payment of any account and that is both joint and several
5. I/we agree that our liability under this guarantee shall not be discharged, abrogated, prejudiced or affected by:
  - (a) the granting of time credit of the indulgence or any other concession by Earthquip Group Ltd
  - (b) any alteration, modification, variation or addition to any agreement between the Account Holder and Earthquip Group Ltd
  - (c) any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect, my/our obligations under this guarantee or any powers or remedies conferred upon by Earthquip Group Ltd by this guarantee or by law.
6. I/we each grant to Earthquip Group Ltd a general security interest in all of our present and after acquired property on our latest Auckland District Law Society General Security Agreement terms as set out in clause 12.9 of the Terms and Conditions.
7. I/we confirm that I/we have been advised by Earthquip Group Ltd that I/we should seek legal advice before signing this guarantee and have either obtained that advice or have freely and voluntarily waived my/our right to obtain that advice.

SIGNATURE: ..... WITNESS SIGNATURE: .....

FULL NAME: ..... WITNESS NAME: .....

POSITION: ..... WITNESS ADDRESS: .....

WITNESS OCCUPATION: .....

SIGNATURE: ..... WITNESS SIGNATURE: .....

FULL NAME: ..... WITNESS NAME: .....

POSITION: ..... WITNESS ADDRESS: .....

WITNESS OCCUPATION: .....

**EARTHQUIP ACCOUNT APPLICATION FORM TERMS & CONDITIONS**

**1 Definitions**

1.1 For the purposes of these Terms and Conditions or otherwise:

- a. **"Account Holder"** means the person or entity in whose name a Earthquip Group Ltd Account is opened and is deemed to include each Guarantor and, where the context permits, is deemed to include any agent, contractor, employee or representative of the Account Holder.
- b. **"Credit Limit"** means the credit limit from time to time specified by Earthquip Group Ltd in its absolute discretion on a Earthquip Group Ltd Account.
- c. **"Default Interest Rate"** means two percent per month compounding on the 20th day of each month or such other rate as Earthquip Group Ltd shall notify the Account Holder in writing as being the then current rate applicable to the Account Holder's Earthquip Group Ltd Account.
- d. **"Due Date"** means the 20th day of the month following the closing date of each Statement.
- e. **"Goods"** means all present and future acquired goods, plant, equipment, parts or other items purchased, leased, hired by, or financed to, the Account Holder by or from Earthquip Group Ltd.
- f. **"Guarantor"** means each guarantor named in this application as such and any other person or entity who gives a guarantee in respect of a Earthquip Group Ltd Account and, where the context permits, includes any agent, contractor, employee or representative of the Guarantor.
- g. **"Limited Damage Waiver"** means any arrangement made or deemed to be made pursuant to clause 5.1(g)(vii).
- h. **"Earthquip Group Ltd Account"** means any credit account created in accordance with these Terms and Conditions or otherwise that may be used by the Account Holder as a trading account with any one or more of the entities comprising the Earthquip Group Ltd.
- i. **"Earthquip Group Ltd Costs"** means costs, sums, fees, duties (including stamp duty), taxes (including GST, and any fines, interest and penalties), legal fees (including as between solicitor and client), including (without limitation) in respect of the negotiation, preparation, execution, registration and enforcement or attempting to enforce (or make good) any document or obligation of the Account Holder or Guarantor, registration fees, interest, premiums, penalties, break costs, loss of profit or margin, levies, payments, rates, rentals, charges, outgoing, expenses, liabilities, claims, losses and other financial obligations, in each case whether direct or indirect.
- j. **"Earthquip Group Ltd"** means any and all of:
  - (i) Earthquip Group Ltd Hire Limited, Earthquip Group Ltd Finance Limited, Earthquip Group Ltd Equipment Limited, Earthquip Group Ltd Haulage Limited, Earthquip Group Ltd Access Hire Limited, Earthquip Group Ltd Cranes Limited, Earthquip Group Ltd Mechanical Limited, Earthquip Group Ltd Parts Limited and/or Earthquip Group Ltd Properties Limited and
  - (ii) Any other company (whether incorporated in New Zealand or otherwise) which is related to any company specified in clause 1.1i.(i) in the manner provided in section 2(3) of the Companies Act 1993.
- k. **"PPSA"** means the Personal Property Securities Act 1999.
- l. **"Security Interest"** has the meaning provided in the PPSA.
- m. **"Services"** means any services, including machinery maintenance and repair, transportation and any other services, provided by Earthquip Group Ltd to the Account Holder.
- n. **"Statement"** means the monthly transaction statement issued by Earthquip Group Ltd in respect of a Earthquip Group Ltd Account.
- o. **"Terms and Conditions"** means these Terms and Conditions as amended, varied, updated, modified, or replaced from time to time by Earthquip Group Ltd and any other terms and conditions of use issued by Earthquip Group Ltd from time to time in relation to Earthquip Group Ltd Accounts.
- p. **"Transactions"** means any servicing, sale, lease, hire or other arrangement entered into between the Account Holder and Earthquip Group Ltd whereby Services are provided to the Account Holder, or Goods are supplied to the Account Holder, in respect of which these Terms and Conditions will apply.

**2 The Contract**

2.1 Upon agreement by the Account Holder in writing to accept these Terms and Conditions or by the Account Holder's use of its Earthquip Group Ltd Account, each Transaction will form a legal contract between the Account Holder and Earthquip Group Ltd. Use of the Earthquip Group Ltd Account by the Account Holder is at all times governed by the then current Terms and Conditions as varied from time to time by Earthquip Group Ltd by notice in writing, and/or changed on the Earthquip Group Ltd website ([www.EarthquipLtdgroup.co.nz](http://www.EarthquipLtdgroup.co.nz)). A reference to "Terms and Conditions" is also deemed to be a reference to the legal contract which exists in respect of each Transaction.

**3 Earthquip Group Ltd Account**

- 3.1 A Earthquip Group Ltd Account provides the Account Holder with a debit account against which the Account Holder can charge authorised Transactions.
- 3.2 Earthquip Group Ltd will maintain a Earthquip Group Ltd Account for the Account Holder to which all Transactions will be debited.
- 3.3 Earthquip Group Ltd may impose such fees and charges as notified to the Account Holder from time to time and such fees and charges (if any) will be debited to the Account Holder's Earthquip Group Ltd Account. 3.4 The Account Holder is liable for all Transactions, fees and charges charged to the Earthquip Group Ltd Account, and all Earthquip Group Ltd Costs.

**4 Terms of Sale of Goods and Provision of Services on Credit**

- 4.1 Goods sold whether on credit or otherwise to an Account Holder are:
  - a. sold for business purposes and the parties agree that the Consumer Guarantees Act 1993 (in this clause "the Act") shall not apply to those Goods. If the Account Holder supplies any Goods to any third party and that supply would otherwise be subject to the provisions of the Act, the Account Holder will obtain the agreement of its customer that the Act will not apply to that supply and if the Account Holder fails to obtain such agreement from its customer then the Account Holder indemnifies Earthquip Group Ltd against any liability incurred by Earthquip Group Ltd arising out of that failure;
  - b. at the Account Holder's risk from dispatch from Earthquip Ltd's premises or from premises which are under Earthquip Ltd's control and/or care at that time (unless damage is directly as a result of any gross negligence or wilful act of Earthquip Group Ltd or any of its employees or authorised

sell, dispose, part with possession, charge, encumber, grant a Security Interest in, or otherwise do anything else inconsistent with Earthquip Ltd's ownership of the Goods, until title in them passes to the Account Holder.

- c. unless otherwise agreed, transported at the cost of the Account Holder. If Earthquip Group Ltd is delivering the Goods to the Account Holder, Earthquip Group Ltd will use its best endeavours to see that delivery is made according to schedule, but shall not be responsible for delays to any such schedule.

4.2 Services provided to an Account Holder whether on credit or otherwise are provided on the basis that:

- a. the Services are provided for business purposes and the parties agree that the Consumer Guarantees Act 1993 shall not apply to those Services.
- b. it is the Account Holder's responsibility to insure any of its property while it is in the control of Earthquip Group Ltd; and
- c. all property of the Account Holder delivered to Earthquip Ltd's possession for provision of the Services is subject to a lien for any sums owing by the Account Holder.

4.3 Subject to clause 18, all claims by an Account Holder for errors or short delivery of Goods or provision of Services must be made in writing to Earthquip Group Ltd quoting relevant invoice numbers within seven days of delivery of the Goods or completion of the Services in question.

4.4 The Account Holder agrees and acknowledges that:

- a. Earthquip Group Ltd has not made any representation that the Goods are of an acceptable quality, durability, or fitness nor that the Goods are new goods or equal to new;
- b. The Account Holder does not rely on Earthquip Ltd's skill or judgment as to the quality, durability or fitness of the Goods for any particular purpose; and
- c. The Account Holder enters into these Terms and Conditions and each Transaction solely in reliance upon its own judgment as to the quality, durability and fitness of the Goods for the Account Holder's purposes, and the risk in these respects is borne by the Account Holder.

4.5 The Account Holder agrees and acknowledges that the Account Holder has inspected the Goods and that the Goods were supplied by Earthquip Group Ltd on a fully operational basis, in proper working order and condition and that the Account Holder:

- a. Will before using the Goods:
  - (i) Ensure that all safety checks appropriate for the use of the Goods are carried out; and
  - (ii) Conduct and be satisfied as to a risk assessment of all work sites at which the Goods will operate, including identifying possible hazards for its employees and other persons operating, or in the vicinity of, the Goods.

b. Acknowledges that it is aware of its obligations and duties under the Health and Safety in Employment Act 1992 and warrants that the Account Holder:

- (i) Has written rules and procedures relating to health and safety which the Account Holder will follow to ensure the safety of its employees and all persons operating, or in the vicinity of, the Goods;
- (ii) Will ensure that all persons who use the Goods are competent to do so and will use it in the manner it was designed to be used, follow any directions from Earthquip Group Ltd, local authorities, codes of practice or from the manufacturer of the Goods relating to the use and safety of the Goods, and will comply with all obligations in relation to the use and control of the Goods and ensure persons using the Goods comply with the Health and Safety in Employment Act 1992 and all other relevant legislation;
- (iii) Is responsible for all health and safety obligations in respect of the Goods and will take all practicable steps to eliminate, isolate, and minimise any hazards or risks for its employees or other persons operating, or in the vicinity of, the Goods and ensure the safety of any person operating the Goods or other persons in the vicinity of the Goods; and
- (iv) Will maintain a register of accidents and conform with any code of practice and regulations which relate to the particular work being undertaken by the Goods

**5 Terms of Hire**

5.1 All Goods hired by Earthquip Group Ltd to the Account Holder are hired on the following terms (unless otherwise expressly provided in any other agreement drafted by Earthquip Group Ltd and entered into between the parties in writing or notified by Earthquip Group Ltd to the Account Holder from time to time) Earthquip Ltd hires to the Account Holder, and the Account Holder takes on hire from Earthquip Group Ltd Group, the Goods for the hire charges, from the commencement date and for the hire period as advised by Earthquip Group Ltd to the Account Holder from time to time and otherwise on these Terms and Conditions. Any Goods hired or supplied at the Account Holder's request without formal record of the terms of hire will be charged for at Earthquip Ltd's standard hire rates.

- b. No later than at least three months prior to the end of the hire period, the Account Holder may give written notice to Earthquip Group Ltd that the Account Holder wishes to extend the hire period. Earthquip Group Ltd may, but is under no obligation to, extend the hire period on terms, including the hire charges notified by Earthquip Group Ltd to the Account Holder.
- c. In the event that no hire period is agreed in writing between the Account Holder and Earthquip Group Ltd Group, the parties expressly agree that the hire period is a term of 12 months less 1 day from the commencement date advised by Earthquip Group Ltd to the Account Holder, or in the event that no commencement date is advised, from the date of delivery to the Account Holder.
- d. The Account Holder must return the Goods at the end of the hire period, provided that Earthquip Group Ltd Group will allow a grace period of 1 hour, without charge (until 9:00am on the day following the last day of the period) for return of the Goods unless otherwise agreed in writing by Earthquip Group Ltd.
- e. The Account Holder has no right to terminate the hireage before the end of the hire period. Notwithstanding this, if the Account Holder returns the Goods, terminates or purports to terminate the hireage, before the end of the hire period (with or without the consent of Earthquip Group Ltd) the Account Holder will pay to Earthquip Group Ltd the total hire charges and any resulting costs and losses (including indirect economic and consequential losses) suffered or incurred by Earthquip Group Ltd as a result of that termination.
- f. Earthquip Ltd undertakes with the Account Holder as follows:
  - (i) Earthquip Ltd must make the Goods available to the Account Holder on the commencement date advised by Earthquip Group Ltd to the Account Holder.

(ii) If the Goods are destroyed or damaged and any insurance money paid to Earthquip Group Ltd by an insurance company pursuant to any claim is, in the opinion of Earthquip Group Ltd, adequate to replace or repair the Goods, Earthquip Group Ltd shall apply the insurance money to this purpose. If in the opinion of Earthquip Group Ltd, any insurance money received is not adequate to replace or repair the Goods then Earthquip Group Ltd will notify the Account Holder of its opinion and such notification will terminate the hireage. Termination will not affect any rights, remedies, obligations or liabilities of either party for any act, omission, or other matter whatsoever arising prior to the termination of the hireage, and the Account Holder will be liable to pay the hire charges to Earthquip Group Ltd and to perform all other obligations to be performed by the Account Holder for the remainder of the hire period, and/or on account of any other indebtedness of the Account Holder to Earthquip Group Ltd, in each case as if the hireage had not been terminated. The Account Holder will pay to Earthquip Group Ltd any shortfall between the insurance proceeds received and the cost to Earthquip Group Ltd of replacing the Goods with like goods.

(iii) Earthquip Group Ltd is responsible for all overhauls, repairs and replacements to the Goods which Earthquip Group Ltd determines, in its sole discretion, are not caused by any failure of the Account Holder to properly check or operate the Goods or not caused by any act or omission or misdirection or misuse of the Goods on the part of the Account Holder or persons under the control of the Account Holder, or not caused by overloading mistakes or neglect in handling or other similar acts or omissions of the Account Holder or persons under the control of the Account Holder. At Earthquip Group Ltd's sole discretion, the costs of such repairs are for the account of Earthquip Group Ltd.

g. The Account Holder undertakes with Earthquip Group Ltd as follows:

(i) The Account Holder is responsible for arranging and paying for the carriage of the Goods to and from Earthquip Ltd's premises or such other premises as notified by Earthquip Group Ltd to the Account Holder and is responsible for all loss or damage to the Goods whatsoever during the carriage. Delivery and collection by a member of the Earthquip Group Ltd will be to and from the footpath unless and agreed otherwise by Earthquip Group Ltd.

(ii) During the hire period, the Goods shall be at the Account Holder's risk. The Account Holder is responsible for and indemnifies Earthquip Group Ltd against all loss of or damage to the Goods whatsoever including, without limitation, the cost of repairs suffered or incurred by Earthquip Group Ltd in consequence of any breakdown or damage to the Goods where such breakdown or damage is caused by any act or omission or misdirection or misuse of the Goods on the part of the Account Holder or persons under the control of the Account Holder, and any costs, loss or damage due to overloading mistakes or neglect in handling.

(iii) The Account Holder will supply a suitably qualified, licensed, and competent operator to operate the Goods.

(iv) The Account Holder will at its own expense supply and top up as necessary all fuel, oil, lubricating oil, grease, cleaning and other consumables necessary for the operation of the Goods and is responsible for checking fuel, oil, lubricants and carrying out other operating checks prior to use of the Goods on a daily basis. Only fuel and lubricating oils approved by Earthquip Group Ltd shall be used.

(v) The Account Holder will ensure the Goods are kept in proper working order at the Account Holder's own expense. The Account Holder will advise Earthquip Group Ltd as soon as is reasonably practicable if the Goods require or are reasonably likely to require repair, replacement, service, maintenance, or other similar work reasonably required to ensure the Goods are kept in proper working order.

(vi) If it has been indicated in Section 1 that the Account Holder will insure the Goods, then the Account Holder will:

a. At its cost arrange for all insurances associated with or in respect of the Goods and their use on terms and with a New Zealand insurance company approved by Earthquip Group Ltd, including but not limited to insurance against fire, theft, accident and damage while in the Account Holder's possession. b. In addition to any other requirements specified in writing by Earthquip Group Ltd from time to time, the Account Holder must:

1. Ensure that the insurance policy is a full replacement insurance policy that provides for a maximum excess of \$5,000 (which is payable by the Account Holder) including without limitation coverage for hire charges, transit costs and public liability. Without limiting Earthquip Ltd's rights to claim loss of revenue from the Account Holder, the insurance policy must also include, at a minimum, coverage for Earthquip Ltd's loss of revenue while the Goods are being repaired or replaced, calculated for the purposes of this clause by multiplying the hourly rate specified in Earthquip Ltd's Hire Rate Booklet published from time to time and available on request from Earthquip Group Ltd, or such other rate as notified by Earthquip Group Ltd to the Account Holder from time to time (and in either case whether before, on or after the commencement date, or whether before, on or after the expiry of the hire period) by 6 hours per day for 3 calendar months ("Three Months' Revenue").
2. Make a claim at any time the Goods are destroyed or damaged or at any other time directed by Earthquip Group Ltd;
3. Agree to Earthquip Group Ltd, in the place of the Account Holder, making a claim or continuing any claim already made by the Account Holder, and agree to transfer to Earthquip Group Ltd, at Earthquip Group Ltd's request, all of its rights and entitlements in this regard.
- c. The insurance policies must show Earthquip Group Ltd as the insured party and must provide for duplicate renewal notices to be sent to Earthquip Group Ltd which has the right at any time to inspect the policy and to pay any outstanding premiums not paid by the Account Holder and add them to the hire charges, and such outstanding premiums will become immediately due and payable by the Account Holder. The Account Holder must ensure that at least 14 days prior written notice is given to Earthquip Group Ltd of the expiry or proposed termination of the insurance policies.
- d. If any money is paid to the Account Holder by the insurance company pursuant to any claim or otherwise, the Account Holder shall be deemed to hold that money in trust for Earthquip Group Ltd and shall immediately pay such money to Earthquip Group Ltd.
- e. If, for any reason whatsoever, the Account Holder in breach of this clause does not hold the required insurance (or any insurance at all), or the Account Holder's insurer does not pay out on the relevant policy, the Account Holder warrants to Earthquip Group Ltd that it will personally be responsible for and liable to Earthquip Group Ltd for all of the obligations set out in this clause and that it will pay to Earthquip Group Ltd the full market replacement value of the Goods (as notified by Earthquip Group Ltd to the Account Holder) within 7 days of request by Earthquip Group Ltd in writing.

f. The Account Holder must, on the date of signing of this Agreement and at any other time requested by Earthquip Group Ltd, provide to Earthquip Group Ltd evidence of insurances taken out. If the Account Holder does not provide such evidence, or does not provide evidence to the satisfaction of Earthquip Group Ltd may provide Limited Damage Waiver for the Goods with effect from the commencement date or such other date as is specified by Earthquip Group Ltd on the terms set out in clause 5.1 (g)(vii) and the Account Holder will be liable for the surcharge set out in that clause together with all other costs and fees incurred by Earthquip Group Ltd.

**5.1 g (vii) – Limited Damage Waiver**

(vii) Subject to clause 5.1g(vii)(e) if it has been indicated in Section 1 that Limited Damage Waiver will apply for the Goods (or if no indication has been made), then:

a. A surcharge of 10% of the hire charges will be added to the hire charges, such surcharge to be divided into equal amounts and spread across the term of the hire, and the Account Holder will make such payments to Earthquip Group Ltd at the same time and in the same manner as the hire charges;

b. Subject to clause 5.1(g)(vii)(c), where the Goods suffer loss or damage (regardless of whether the Account Holder, persons under the control of the Account Holder or any other party has caused or contributed to that loss or damage), the Account Holder's liability to Earthquip Group Ltd in relation to such loss or damage is limited to the total of the following:

1. Three Months' Revenue; and
2. Any fines, penalties, infringement fees or other similar costs imposed by any authority having jurisdiction to do so (irrespective of whether the Account Holder has used the Goods for an authorised or unauthorised purpose); and
3. Either:
  - (i) Where Earthquip Group Ltd is insured with a third party, the excess payable pursuant to that insurance policy to a maximum of \$5,000; or
  - (ii) Where Earthquip Group Ltd is not so insured with a third party, \$5,000.

c. The provisions of clause 5.1(g)(vii)(b) will not apply if, before, on or after the date the Goods suffer the loss or damage, any one or more of the following apply:

1. The Account Holder is in breach of these Terms and Conditions, including without limitation, payment of the Limited Damage Waiver surcharge pursuant to clause 5.1(g)(vii)(a); or
  2. The Account Holder is in breach of any other agreement with any member of the Earthquip Group Ltd Group; or
  3. The Account Holder is in breach of any applicable laws; or
  4. The Account Holder is in breach of the manufacturer's or Earthquip Ltd's instructions; or
  5. The loss or damage is caused or contributed to by the Account Holder's or any other person's (whether permitted or otherwise by the Account Holder) intentional, malicious, reckless, dishonest, fraudulent or deliberate act or omission, or an act or omission of gross negligence; or
  6. The loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods under the influence of drugs, alcohol or other prohibited substance; using the Goods for other than their intended purpose, or subjecting the Goods to pollution or contamination; or
  7. The loss or damaged is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods without being licensed to do so, or failing to comply with any licence conditions; or
  8. The loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods while having been directed by a medical or other professional person not to operate the Goods or any similar goods or equipment due to any condition, illness, medical treatment, or medication; or
  9. The Goods are seized by any authority having jurisdiction to do so; or
  10. The loss or damage to the Goods is caused or contributed to by an event which the Account Holder could have prevented or mitigated by taking reasonable steps to prevent the loss or damage occurring; or
  11. The loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods in connection with hazardous stock, merchandise, chemicals or in other hazardous situations; or
  12. The loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods for the purposes of a protest, civil disruption, unlawful purpose, or criminal activity; or
  13. The loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods for the purpose of carrying passengers; or
  14. The Account Holder, or any other person operating the Goods (whether permitted or otherwise by the Account Holder), does not provide Earthquip Group Ltd or the police with all assistance and information required to fully investigate and determine the circumstances surrounding the loss or damage, does not do anything reasonably required by Earthquip Group Ltd to mitigate any loss by Earthquip Group Ltd, or fails to report to Earthquip Group Ltd or the police if required by Earthquip Group Ltd (including failing to take any required breath or blood test for drug or alcohol use).
- d. The Account Holder acknowledges that Limited Damage Waiver applies only to loss or damage to the Goods and does not limit, prejudice, or affect any other obligation the Account Holder has or may have to Earthquip Group Ltd.
- e. Notwithstanding any indication in Section 1, Earthquip Group Ltd reserves the right at time before or during the hire to decline or cancel Limited Damage Waiver, in which case either (at Earthquip Group Ltd Group's discretion):
1. The Account Holder must insure to Earthquip Ltd's satisfaction in accordance with clause 5.1(g)(vi); or
  2. Earthquip Group Ltd may terminate the hireage, and the Account Holder will have no claim, right or remedy against Earthquip Group Ltd for such termination or in any other way howsoever.
- f. The Account Holder agrees that Limited Damage Waiver is not a contract of insurance.
- (viii) Notwithstanding any other provision in these Terms and Conditions, and in particular clause 5.1(g)(vii), the Account Holder is liable for and will indemnify Earthquip Group Ltd against all loss or damage to buckets, teeth or hoses, excessive wear on ground engaging parts, paint scratches, glass damage and tyre damage.

- (ix) If the Goods are destroyed or damaged, until any insurance money (if any) is received by Earthquip Group Ltd, and unless otherwise determined by Earthquip Group Ltd, the Account Holder continues to be liable to pay Earthquip Group Ltd the hire charges and for all other obligations and responsibilities of the Account Holder under these Terms and Conditions, including in respect of all other indebtedness of the Account Holder to Earthquip Group Ltd.
- (x) The Account Holder is responsible for and Earthquip Group Ltd will not be liable for any losses, costs or damages suffered, whether direct or indirect as a result of any down time incurred by the Account Holder while the Goods are being repaired.
- (xi) The Account Holder will not make any alterations to, modify or add accessories to the Goods without the prior written consent of Earthquip Group Ltd and will not remove any identification features on the Goods or any part of the Goods.
- (xii) The Account Holder will not dispose of, create a Security Interest in, encumber, charge, sell, sublet, hire or part with possession of the Goods and will not allow any lien to be created over the Goods for the cost of repairs or otherwise. The Account Holder will not on-hire the Goods or in any other way part with possession of the Goods to a third party without the prior written consent of Earthquip Group Ltd.
- (xiii) The Account Holder will immediately notify Earthquip Group Ltd in writing of any loss or damage to the Goods, including but not limited to mechanical breakdown.
- (xiv) The Goods will be situated at such location as may be agreed from time to time by Earthquip Group Ltd Group and the Account Holder. The Account Holder will keep the Goods safe and secure at all times when not in use.
- (xv) If required by Earthquip Group Ltd, the Account Holder will obtain a written acknowledgement from the registered proprietor or landlord, and the mortgagee if applicable, of any land on which the Goods may be located acknowledging that Earthquip Group Ltd owns the Goods and that the registered proprietor or landlord, and the mortgagee of the land, has no right to distrain the Goods and has no other rights in respect of the Goods.
- (xvi) The Account Holder will only use or permit the Goods to be used for that type of work agreed to from time to time.
- (xvii) The Account Holder will be responsible for all offences committed which involve the Goods, including but not limited to traffic infringements, parking fines, fines for overloading, operating without the correct licence, or carrying hazardous goods without the correct permits or licences.
- (xviii) The Account Holder agrees and acknowledges that:

- a. Earthquip Group Ltd has not made any representation that the Goods are of an acceptable quality, durability, or fitness nor that the Goods are new goods or equal to new;
- b. The Account Holder does not rely on Earthquip Ltd's skill or judgment as to the quality, durability or fitness of the Goods for any particular purpose; and
- c. The Account Holder enters into these Terms and Conditions and each Transaction solely in reliance upon its own judgment as to the quality, durability and fitness of the Goods for the Account Holder's purposes, and the risk in these respects is borne by the Account Holder.
- (xix) The Account Holder agrees and acknowledges that the Account Holder has inspected the Goods and that the Goods were supplied by Earthquip Group Ltd on a fully operational basis, in proper working order and condition and that the Account Holder:
- a. Will before using the Goods:
1. Ensure that all safety checks appropriate for the use of the Goods are carried out; and
  2. Conduct and be satisfied as to a risk assessment of all work sites at which the Goods will operate, including identifying possible hazards for its employees and other persons operating, or in the vicinity of, the Goods.
- b. Will carry out prestart daily inspection reports in accordance with Earthquip Ltd's specifications from time to time before using the Goods. These inspection reports must be made available on request by Earthquip Group Ltd.
- c. Acknowledges that it is aware of its obligations and duties under the Health and Safety in Employment Act 1992 and warrants that the Account Holder:
1. Has written rules and procedures relating to health and safety which the Account Holder will follow to ensure the safety of its employees and all persons operating, or in the vicinity of, the Goods.
  2. Will ensure that all persons who use the Goods are competent to do so and will use it in the manner it was designed to be used, follow any directions from Earthquip Group Ltd, local authorities, codes of practice or from the manufacturer of the Goods relating to the use and safety of the Goods, and will comply with all obligations in relation to the use and control of the Goods and ensure persons using the Goods comply with the Health and Safety in Employment Act 1992 and all other relevant legislation;
  3. Is responsible for all health and safety obligations in respect of the Goods and will take all practicable steps to eliminate, isolate, and minimise any hazards or risks for its employees or other persons operating, or in the vicinity of, the Goods and ensure the safety of any person operating the Goods or other persons in the vicinity of the Goods; and
  4. Will maintain a register of accidents and conform with any code of practice and regulations which relate to the particular work being undertaken by the Goods.
- h. The hire charges are to be paid in full without deduction, setoff, or counterclaim with payments to be made to Earthquip Group Ltd in the manner specified by Earthquip Group Ltd from time to time.
- i. The hire charges will be charged for the whole hire period and no adjustment will be made for any time during which the Goods are not in use unless otherwise agreed in writing by Earthquip Group Ltd Group. Subject to clauses 5.1j and 5.1k, the hire charges payable by the Account Holder to Earthquip Ltd Group are the greater of:
- (i) The hire charges specified by Earthquip Group Ltd to the Account Holder from time to time; or
- (ii) The amount calculated by multiplying the hourly rate specified in Earthquip Ltd's Hire Rate Booklet published from time to time and available on request from Earthquip Group Ltd, or such other rate as notified by Earthquip Group Ltd to the Account Holder from time to time (and in either case whether before, on or after the commencement date, or whether before, on or after the expiry of the period), by the number of hours the Goods are operated by the Account Holder or persons under the control of the Account Holder, as determined by Earthquip Group Ltd; or

- (iii) The number of days the Goods are in the possession of or in the control of the Account Holder or persons under the control of the Account Holder (including beyond the end of the hire period) multiplied by 6 hours per day multiplied by the hourly rate specified in Earthquip Ltd's Hire Rate Booklet published from time to time and available on request from Earthquip Group Ltd, or such other rate as notified by Earthquip Group Ltd to the Account Holder from time to time (and in either case whether before, on or after the commencement date, and whether before, on or after the expiry of the period).
- j. The Account Holder acknowledges that it is liable for the hire charges specified by Earthquip Group Ltd Group at the commencement of the hire period as a minimum fee irrespective of actual usage of the Goods by the Account Holder.
- k. At Earthquip Ltd's sole discretion, no hire charges are payable for any period while the Goods are unable to be operated due to a breakdown or failure of the Goods to operate properly unless such loss or operation or breakdown has been caused by the improper operation of the Goods by the operator, improper servicing by the Account Holder, or caused by any act or omission or misdirection or misuse of the Goods on the part of the Account Holder or persons under the control of the Account Holder, or caused by overloading mistakes or neglect in handling, or other similar acts or omissions of the Account Holder or persons under the control of the Account Holder.
- l. On or before the commencement date, or at any other time requested by Earthquip Group Ltd, the Account Holder will provide to Earthquip Group Ltd a bond in cash or other cleared funds as permitted by Earthquip Group Ltd, in the amount of:
- (i) \$500 for Goods less than 2 tonne; or
- (ii) \$1000 for Goods greater than 2 tonne ("the Bond").
- m. On return of the Goods by the Account Holder, Earthquip Group Ltd may use the whole or any part of the Bond against the costs incurred by Earthquip Group Ltd pursuant to clause 5.1(o) or any other amounts outstanding by the Account Holder to Earthquip Group Ltd will pay the balance (if any) to the Account Holder.
- n. The use of the Bond by Earthquip Group Ltd is without prejudice to any other rights or remedies available to Earthquip Group Ltd, including but without limitation under any indemnity given by the Account Holder to Earthquip Group Ltd.
- o. At the end of the hire period, the Account Holder shall deliver the Goods to Earthquip Group Ltd or such other party as Earthquip Group Ltd directs in good working order, repair, condition, and appearance as they were when delivered to the Account Holder, fair wear and tear only excepted. The Account Holder will also ensure the Goods are returned with a full tank of fuel. The Account Holder will be liable for and will indemnify Earthquip Group Ltd against the cost of reconditioning any Goods rendered unfit for further service by the Account Holder, and for the cost of refuelling the Goods.
- p. Earthquip Group Ltd retains full title to the Goods notwithstanding:
- (i) The delivery of the Goods to the Account Holder;
- (ii) The possession and use of the Goods by the Account Holder; and /or
- (iii) Any temporary attachment of the Goods to any land or premises to facilitate the use of the

- Goods;
- q. Earthquip Group Ltd or anyone authorised by Earthquip Group Ltd may inspect, and may at Earthquip Ltd's sole discretion, service and maintain the Goods, or otherwise deal with the Goods in Earthquip Group Ltd Group's sole discretion, at any reasonable time;
- r. Earthquip Group Ltd or anyone authorised by Earthquip Group Ltd may enter any place where the Goods are kept or believed to be kept for any of the purposes set out in clause 5.1(q). The Account Holder will provide to Earthquip Group Ltd access to any such place, and will provide all necessary assistance to obtain the consent of the registered proprietor, landlord, and/or any mortgagee of any land upon which the Goods are kept or believed to be kept to the entry by Earthquip Group Ltd for these purposes and will make the Goods available for such purposes;
- s. The Account Holder must, in its dealings with financiers, insurers and other third parties who may have an interest in the Goods, clearly indicate that the Goods are the property of Earthquip Group Ltd Group;
- t. Without limiting the provisions of clause 12, and notwithstanding clause 5.1(c), if a hireage creates a Security Interest as that term is defined in the PPSA in the Goods, the proceeds of the Goods, and all present and after acquired property arising out of or as a result of the Goods, in favour of Earthquip Group Ltd as security for the payment of all moneys payable or to become payable by the Account Holder to Earthquip Group Ltd and the performance of all of the Account Holder's obligations under these Terms and Conditions, the provisions of clause 12 will apply and the Account Holder will, at any time requested by Earthquip Group Ltd, promptly execute any documents, provide any necessary information and do anything else required by Earthquip Group Ltd to ensure that the Security Interest constitutes a first ranking Perfected Security Interest (as that term is defined in the PPSA).
- The Account Holder will also provide such information that Earthquip Group Ltd requires to complete a financing statement or financing change statement (as those terms are defined in the PPSA);
- u. Unless agreed in writing to the contrary, the acceptance by the Account Holder of any Goods on hire from Earthquip Group Ltd shall in itself constitute an acceptance of these Terms and Conditions, and the charges on any accompanying hire agreement form, or acknowledgment of order.

#### **6 Price and Payments**

- 6.1** All prices and hire charges are plus GST and other taxes and duties, which shall be paid by the Account Holder.
- a. Earthquip Ltd may change its prices or hire rates without notice to the Account Holder.
- b. If Earthquip Group Ltd provides a quotation to the Account Holder, it is based on information available to Earthquip Group Ltd at that time and Earthquip Group Ltd may charge the Account Holder more than the amount quoted if its costs (such as the cost of labour, materials, transport, tax, exchange rates or other costs) or the specifications change.
- 6.2** A Statement will be issued in respect of Services provided and Goods sold, hired or leased on the terms applicable to the provision of Services or Goods as set out in separate terms for the relevant Transaction or, in the absence of any such terms, on the terms contained in these Terms and Conditions. A single Statement will be issued in respect of the Account Holder's Earthquip Group Ltd Account on the last day of each month unless the Earthquip Group Ltd Account has a nil balance and has had no activity during the preceding month. The balance shown on the Statement is due on the Due Date in full and no set off, deduction or counter claim is permitted.

**6.3** If the Account Holder makes payment of the full amount shown on the Statement by the Due Date no interest will be charged on Transactions listed in the Statement EXCEPT where a balance is carried forward from an earlier Statement.

**6.4** If the full amount of the Statement is not paid on or before the Due Date then interest shall accrue on the daily outstanding balance of the Earthqup Group Ltd Account so unpaid at the Default Interest Rate from the Due Date of the Transactions to which such outstanding balance relates to the date the amount is paid in full.

**6.5** Interest accruing on a Earthqup Group Ltd Account shall be charged to that Earthqup Group Ltd Account on the 20th day of each month and shall compound monthly on the 20th day of each month until full payment has been made.

**6.6** Subject to clause 6.7, any payments made will be applied against the Earthqup Group Ltd Account in the following order (unless otherwise agreed between Earthqup Group Ltd and the Account Holder):

- a. All interest accrued to the date of payment;
- b. All fees or charges and any government duties shown on the current Statement and any previous Statements/;
- c. All costs incurred pursuant to clause 19 and any other costs incurred by any member of the Earthqup Group Ltd;
- d. All Transactions outstanding on previous Statements;
- e. All Transactions outstanding on the current Statement;
- f. All Transactions made since the commencement date of the current Statement;
- g. Any other outstanding balances remaining unpaid.

**6.7** In addition to any rights which Earthqup Group Ltd may have by law any member of the Earthqup Group Ltd Group may at any time without notice to or the consent of the Account Holder:

- a. Deduct from or set-off against any debts or liabilities of the Account Holder any debts or liabilities of any member of the Earthqup Group Ltd, to the Account Holder;
- b. Apply any payments against the matters set out in clauses 6.6a-g owing in respect of any one or more of the companies comprising the Earthqup Group Ltd at the Earthqup Ltd's discretion and without need for the Account Holder's consent.

**6.8** Notwithstanding clause 6.2, the outstanding balance of a Earthqup Group Ltd Account is repayable on demand or, failing demand, then on the expiry, cancellation or withdrawal of the Earthqup Group Ltd Account.

**6.9** Payments may be made directly to Earthqup Group Ltd care of PO Box 10164, Hamilton or by direct credit to Earthqup Ltd's bank account by prior agreement with Earthqup Group Ltd, or in such other manner as notified by Earthqup Group Ltd to the Account Holder.

**6.10** Payments other than notes and coins will be provisionally credited to a Earthqup Group Ltd Account but will not be treated as payment until cleared.

**6.11** Statements may be subject to alteration by reversal of unpaid debits or credits processed on or about the date of the Statement.

#### **7 Credit Limit**

**7.1** The outstanding balance of a Earthqup Group Ltd Account shall not exceed the Credit Limit without Earthqup Group Ltd

Group's written approval. If at any time, a Earthqup Group Ltd Account balance exceeds the Credit Limit the amount in excess of the Credit Limit will be immediately due and payable. Any such excess does not constitute approval from Earthqup Group Ltd as to an increase in the Credit Limit.

**7.2** The Credit Limit may be increased, decreased or cancelled at the sole discretion of Earthqup Group Ltd Group and any Earthqup Group Ltd Account may be withdrawn at any time without Earthqup Group Ltd being required to provide any reason to the Account Holder.

#### **8 Cancellation of a Earthqup Group Ltd Account**

**8.1** A Earthqup Group Ltd Account may be cancelled by written notice to the Account Holder by Earthqup Group Ltd. Upon notification that a Earthqup Group Ltd Account has been cancelled, the Account Holder must immediately pay the outstanding balance of the Earthqup Group Ltd Account and any Earthqup Group Ltd Costs or other costs incurred by Earthqup Group Ltd in collecting payment. Interest at the Default Interest Rate shall accrue on the Earthqup Group Ltd Account until payment of the outstanding balance has been made.

**8.2** An Account Holder may cancel its Earthqup Group Ltd Account at any time by notifying Earthqup Group Ltd in writing and immediately paying the outstanding balance of the Earthqup Group Ltd Account.

**8.3** Cancellation of a Earthqup Group Ltd Account does not negate or reduce an Account Holder's liability to pay Earthqup Group Ltd all amounts outstanding at that time together with charges and debts relating to the Earthqup Group Ltd Account that may subsequently be processed, nor affect any rights of Earthqup Group Ltd that arise before termination.

#### **9 Collateralisation**

**9.1** These Terms and Conditions are interdependent and collateral to any other deed or agreement between Earthqup Group Ltd and the Account Holder that may be entered into at any time on, before, or after these Terms and Conditions ("**Other Agreement**") to the end and intent that:

- a. A default by the Account Holder under these Terms and Conditions shall constitute a default by the Account Holder under each Other Agreement; and
- b. A default by the Account Holder under any Other Agreement shall constitute a default by the Account Holder under these Terms and Conditions.
- c. All rights and powers of Earthqup Group Ltd pursuant to these Terms and Conditions or any Other Agreement (including, without limitation, the right to enforce any security) shall be available to Earthqup Group Ltd in respect of any such default by the Debtor under these Terms and Conditions or any Other Agreement.

**9.2** The Account Holder agrees and warrants that the Account Holder will fully comply with the provisions of these Terms and Conditions and each Other Agreement.

#### **10 Account Holder Representations and Warranties**

**10.1** The Account Holder represents and warrants to Earthqup Ltd that:

a. The information provided by the Account Holder in connection with these Terms and Conditions is true and correct and remains true to the date of these Terms and Conditions and there are no facts or circumstances that have not been disclosed to Earthqup Group Ltd which would

make any information untrue, inaccurate or misleading;

b. All matters and things have been done and performed so as to authorise and make the execution and delivery of these Terms and Conditions legal, valid and binding;

c. It is unaware of any facts or circumstances which would or might, if disclosed, affect the

d. If a company, it can satisfy the "solvency test" according to the meaning of the term in section 4 of the Companies Act 1993.

#### **11 Credit Contracts and Consumer Finance Act 2003 ("CCCFA")**

**11.1** Where the Account Holder is an individual, the Account Holder has made a separate declaration that these Terms and Conditions have been entered into primarily for their business or investment purposes and accordingly the relevant provisions of the CCCFA do not apply.

#### **12 Security**

**12.1** Any and all of the Earthqup Group Ltd companies can be, at the discretion of the Earthqup Group Ltd, defined (if applicable) as a "secured party" for the purposes of the PPSA (whether together or individually). The Account Holder is defined as a "debtor" for the purposes of the PPSA.

**12.2** The Goods shall be further defined (if applicable) as "collateral" for the purposes of the PPSA.

**12.3** Except as relates to leases or hireage for a term of less than 12 months, the Account Holder grants a Security Interest in the Goods, the proceeds of the Goods, and all present and after acquired property arising out of or as a result of the Goods, in favour of Earthqup Group Ltd as security for the payment of all moneys payable or to become payable by the Account Holder to Earthqup Group Ltd and the performance of all the Account Holder's obligations under these Terms and Conditions.

**12.4** The Account Holder will, at any time requested by Earthqup Group Ltd, promptly execute any documents, provide any necessary information, and do anything else required by Earthqup Group Ltd to ensure the Security Interest constitutes a first ranking Perfected Security Interest (as that term is defined in the PPSA). The Account Holder shall provide all such information that Earthqup Group Ltd requires to complete a Financing Statement or Financing Change Statement (as those terms are defined in the PPSA).

**12.5** The Account Holder must not grant to any other person a Security Interest, nor consent to any other person creating a Security Interest or registering a Financing Statement, in respect of the Goods, the proceeds of the Goods, and all present and after acquired property arising out of or as a result of the Goods, or the Account Holder's other personal property, without the prior written consent of Earthqup Group Ltd. **12.6** All costs of and incidental to the registration, amendment or discharge of the Security Interest, Financing Statement or Financing Change Statement must be paid by the Account Holder.

**12.7** The Account Holder will promptly notify Earthqup Group Ltd of any changes to the Account Holder's details.

**12.8** The Account Holder:

a. Acknowledges that where Earthqup Group Ltd 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 and any other sections that the Account Holder is able to waive its rights pursuant to;

c. Waives its right to receive a copy of the Verification Statement or a Financing Change Statement relating to any Security Interest created by these Terms and Conditions.

d. If the Goods that Earthqup Group Ltd has a Security Interest in are processed, included or dealt with in any way causing them to become accessions, processed or comingled goods, Earthqup Ltd's Security Interest will continue in the accessions, processed or comingled goods in which they are included. The Account Holder shall not grant any other Security Interest or any lien in the accessions, processed or comingled goods.

**12.9** Until all moneys owed by the Account Holder to Earthqup Group Ltd under all of the Account Holder's Earthqup Group Ltd Accounts have been paid, the Account Holder's Earthqup Group Ltd Accounts closed and all the Account Holder's obligations under these Terms and Conditions satisfied in full, the Account Holder irrevocably grants Earthqup Group Ltd and its agents the right to enter into the Account Holder's property, any property occupied by the Account Holder or any other property where the Goods are stored and to take possession of the Goods. Earthqup Group Ltd shall not be responsible for any damage caused in the process of taking the Goods and the Account Holder will indemnify Earthqup Group Ltd against liability to any other party should Earthqup Group Ltd take the Goods.

**12.10** Words in this clause shall, if the context permits, have the meanings given to them by virtue of the PPSA.

**12.11** The Account Holder irrevocably appoints Earthqup Group Ltd and each of its directors (jointly and severally) to be its attorney to sign in its name and on its behalf any security which Earthqup Group Ltd shall request it to execute pursuant to this clause.

#### **13 Default**

**13.1** The Account Holder will be in default if:

a. The Account Holder fails to pay any amounts due to Earthqup Group Ltd on the due date; or

b. The Account Holder commits a breach of any of its other obligations in these Terms and Conditions, any security granted, or the terms of any other agreement between the Account Holder, and Earthqup Group Ltd; or

c. The Account Holder goes into liquidation or receivership or a resolution to place it in liquidation is passed or proposed or the Account Holder is unable to pass the solvency test as defined in the Companies Act 1993; or

d. Execution or distress against the Account Holder or the assets of the Account Holder is levied; or

e. Any insurance proposal made by the Account Holder in respect of the Goods is declined or cancelled; or

f. The Account Holder does or omits to do anything which might endanger the safety or condition of the Goods; or

g. Earthqup Group Ltd believes the Goods are "at risk" as defined in the PPSA; or

h. The Account Holder enters into a scheme of arrangement with the Account Holder's creditors; or

i. The Account Holder has made a false statement when negotiating a Transaction.

j. An event or a series of events (whether related or not) occurs which, in Earthqup Ltd's opinion, may cause an adverse change in the Account Holder's ability to meet its obligations to Earthqup Group Ltd.

**13.2** If the Account Holder is in default Earthqup Group Ltd may, at its discretion and without prejudice to its other rights and remedies, do any one or more of the following:

a. Charge interest at the Default Interest Rate on any late payments calculated on a daily basis from the date payment is due until the date payment is received. Interest accrues after as well as before judgment;

- b. Charge costs in accordance with clause 19 and any other costs incurred by any member of Earthquip Group Ltd;
- c. Require the Account Holder to remedy the default in the manner and within a period notified by Earthquip Group Ltd;
- d. Remedy the Account Holder's default and charge the Account Holder any costs incurred by Earthquip Group Ltd in so doing;
- e. Require the Account Holder to pay to Earthquip Group Ltd all amounts the Account Holder owes immediately;
- f. Suspend or terminate the Account Holder's account with Earthquip Group Ltd or any other account or agreement the Account Holder has with any member of Earthquip Group Ltd;
- g. Enforce Security Interests created by these Terms and Conditions;

h. Exercise any rights that Earthquip Group Ltd has under these Terms and Conditions or that are

available at law;

i. Enter any place where the Goods are kept or believed to be kept and retake possession of the Goods.

**13.3** If these Terms and Conditions are terminated then all monies payable under these Terms and Conditions, if they are not already due for payment, shall become due for payment at the time of termination.

**13.4** Nothing in this clause will release the Account Holder from any past, present or future liability under these Terms and Conditions.

**13.5** Nothing in this clause affects any other rights Earthquip Group Ltd may have at law or in equity against the Account Holder.

**13.6** Nothing in this clause constitutes a waiver of the Account Holder's default and the default interest and other costs payable by the Account Holder are not an extension of credit to the Account Holder but are a genuine pre-estimate of Earthquip Ltd's loss caused by the Account Holder's failure to pay on the due date.

#### **14 Indemnity**

**14.1** To the maximum extent permitted by law, the Account Holder indemnifies Earthquip Group Ltd and its directors, employees, contractors and agents against all damages, costs, losses (including loss of revenue, business, goodwill, anticipated savings, and any other direct or indirect or consequential loss arising from the loss of, or the damage to, the Goods) or liabilities which may arise directly or indirectly in respect of the Goods or their use or operation by the Account Holder or any other party, and against any liability for any direct, indirect or consequential injury, loss or damage arising directly or indirectly out of any act or default or omission of, or any representations made by the Account Holder or by any servant, agent, employee, representative or contractor, of the Account Holder.

#### **15 Personal Liability**

**15.1** Where the Account Holder is a company, the persons signing these Terms and Conditions on behalf of the Account Holder shall be personally liable for all of the obligations of the Account Holder under these Terms and Conditions as if those persons signed as a Guarantor.

#### **16 Joint Accounts**

**16.1** Where there is more than one person named as Account Holder ("joint account"), the liability of those persons is joint and several.

**16.2** Earthquip Group Ltd will accept instructions relating to a joint account from any of the named persons. To cancel a joint account, the consent or request of only one named person is necessary. Cancellation does not affect the Account Holder's liability until all obligations have been met.

#### **17 Privacy Act**

**17.1** Any information received about the Account Holder by Earthquip Group Ltd will be held by Earthquip Group Ltd and may be accessed and corrected by the Account Holder under the Privacy Act 1993. This information may be used by Earthquip Group Ltd to offer or provide the Account Holder with information about Earthquip Ltd's products and services and those of selected third parties, for the purposes of considering the Account Holder's application for the Earthquip Group Ltd Account and for operation of the Earthquip Group Ltd Account.

**17.2** Earthquip Group Ltd is authorised, by the Account Holder to:

a. make any enquiries to any person or company concerning the Account Holder's credit record, residence, employment, financial status, or any information provided by the Account Holder in its application for a Earthquip Group Ltd Account and the Account Holder authorises any person or company so approached to provide such information to Earthquip Group Ltd.

b. disclose any information about the Account Holder:

- (i) to any person who guarantees, or who provides insurance, or who provides other credit support, in relation to the Account Holder's obligations to Earthquip Group Ltd;
- (ii) to such persons as may be necessary or desirable to enable Earthquip Group Ltd to exercise any power or enforce or attempt to enforce any of Earthquip Ltd's rights, remedies and powers under these Terms and Conditions.

**17.3** In the event of any default by the Account Holder under these Terms and Conditions, Earthquip Group Ltd may:

- a. List the Account Holder as a defaulter with credit reference agencies (prior notice in writing of Earthquip Ltd's intention to do so will be given to the Account Holder's last known address);
- b. Use the services of enquiry agents; and
- c. Place the debt with a collection agent.

**17.4** Earthquip Group Ltd does not need to inform the Account Holder of any of the above matters in any future dealing Earthquip Group Ltd may have with the Account Holder.

#### **18 Liability**

**18.1** To the extent permitted by law, all warranties, conditions or obligations imposed on Earthquip Group Ltd Group at law, in equity, or otherwise are expressly excluded.

**18.2** The Account Holder and each member of the Earthquip Group Ltd contract out of sections 9, 12A,

13 and 14(1) of the Fair Trading Act 1986.

**18.3** To the extent permitted by law, Earthquip Group Ltd or its directors, employees, contractors and agents shall not be liable for any loss, damage or liability of any kind whatsoever (including indirect or consequential losses or loss of profit, business, revenue, or goodwill), or for any delays, accidents or damages of any kind whether direct or indirect which arise through defect or breakdowns of the Goods, or any other way whether suffered or incurred by the Account Holder or another person and whether in contract, tort (including negligence), or otherwise, and whether such loss or damage arises directly or indirectly from the Goods or Services provided by Earthquip Group Ltd to the Account Holder or otherwise.

**18.4** If, for any reason, a court finds, despite clause 18.3, that Earthquip Group Ltd is liable to the Account Holder then, to the maximum extent permitted by law, such liability will be limited to \$10,000.

#### **19 Costs**

**19.1** The Account Holder must pay the Earthquip Group Ltd Costs, including where not otherwise covered, Earthquip Ltd's costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of Earthquip Ltd's rights, remedies and powers under these Terms and Conditions and any other agreement between the Account Holder and Earthquip Group Ltd, as well as the costs of and incidental to, the negotiation, preparation, execution and enforcement of any additional security or other agreement between the parties.

#### **20 Miscellaneous**

**20.1** Force Majeure: Earthquip Group Ltd will not be in breach of these Terms and Conditions and will not be liable to the Account Holder or any Guarantor for costs or delay attributable in whole or in part to action by any government or governmental agency or other external agency or event, including, without limitation, natural disaster or emergency, industrial action, civil disorder, equipment failure, banking or computer system disruption or interruption of power supplies or any other event beyond Earthquip Ltd's control.

**20.2** Certificates: A certificate by Earthquip Group Ltd as to any amounts owing or payable under these Terms and Conditions, and any other agreement, will (in the absence of manifest error) be conclusive evidence for all purposes including legal proceedings.

**20.3** Time of Essence: Unless otherwise stated in these Terms and Conditions, time will be of the essence for the performance of any obligations of the Account Holder or any Guarantor.

**20.4** Severance: If any provision of these Terms and Conditions are found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.

**20.5** Survivorship: Termination of these Terms and Conditions for any reason (including in the event of misrepresentation) will not affect the rights and obligations of the parties as are intended (expressly or impliedly) to survive the termination.

**20.6** Waiver: No delay, neglect or forbearance by either party in enforcing against the other party any provision of these Terms and Conditions will be a waiver, or in any way prejudice any right, of that party. None of the provisions of these Terms and Conditions will be considered to be waived by a party except when such waiver is given in writing and signed by a suitably authorised person for that party. No waiver by a party of any breach shall be deemed a waiver of any continuing or recurring breach unless it is expressly agreed to be so in writing by the parties.

**20.7** Entire Agreement:

a. Subject to any other agreement entered into between the Account Holder and Earthquip Group Ltd (only where the agreement was prepared by Earthquip Group Ltd), these Terms and Conditions constitute the entire agreement and understanding between the parties and supersedes all prior discussions and agreements covering the subject matter of these Terms and Conditions.

b. These Terms and Conditions apply notwithstanding any provision to the contrary expressed or implied in any of the Account Holder's terms of trade or other documents.

c. To the extent of any inconsistency between these Terms and Conditions and any other agreement entered into between the Account Holder and Earthquip Group Ltd (only where the other agreement was prepared by Earthquip Group Ltd), the specific terms of the other agreement will prevail.

**20.8** Amendment: Earthquip Group Ltd may unilaterally amend these Terms and Conditions at any time either by written notice to the Account Holder or by publishing such changes on its website. Any such changes will take effect from the date of notification or publication on the website (as the case may be).

**20.9** Assignment

a. The Account Holder shall not transfer, assign or otherwise deal with its rights, powers or obligations under these Terms and Conditions without Earthquip Ltd's prior written consent. A change in the effective management or control of the Account Holder will be deemed an assignment for the purposes of this clause.

b. Earthquip Group Ltd and its successors or assigns may in its absolute discretion without the consent of or notice to the Account Holder, transfer, assign or otherwise deal with its rights, powers or obligations under these Terms and Conditions to any other entity or person.

**20.10** Additional Information: Earthquip Group Ltd may at any time, whether before or after these Terms and Conditions form a binding agreement between the parties, request such additional information as it considers necessary from the Account Holder.

**20.11** Creditor's Other Rights: Nothing in this clause affects any other rights Earthquip Group Ltd may have at law or in equity as against the Account Holder. Rights and remedies specified in these Terms and Conditions are without prejudice to any other rights or remedies available to Earthquip Group Ltd Group.

**20.12** The Account Holder irrevocably appoints Earthquip Group Ltd and its directors jointly severally as its attorney to do anything which the attorney thinks necessary or desirable to give effect to these Terms and Conditions and any other agreement between the Account Holder and Earthquip Group Ltd.

This provision applies before and after any default by the Account Holder under these Terms and Conditions, and permits the signing of all documents and entry into any premises where the Goods are, or are reasonably assumed by Earthquip Ltds to be.

**20.13** Haulage: The Account Holder acknowledges that any delivery of the Goods by any member of the Earthquip Group Ltd is subject to the terms and conditions of haulage posted from time to time on the Earthquip Group Ltd website and that without limiting those terms and conditions, all Goods carried by any member of the Earthquip Group Ltd are carried at "limited carrier's risk" for the purposes of the Carriage of Goods Act 1979.



**20.14 Acceptance of Terms:** If the Account Holder does not sign these Terms and Conditions, the Account Holder is deemed to have accepted these Terms and Conditions upon use of the Earthquip Group Ltd Account. **20.15 Governing Law:** The law of New Zealand applies to these Terms and Conditions except to the extent expressly negated or varied by these Terms and Conditions.

**21 Notices**

**21.1** Notices, communications, documents or demands required to be made or served pursuant to these Terms and Conditions shall be in writing signed by the party giving the notice or by any officer or solicitor of that party. Any notice or document shall be deemed to be duly given or made:

- a. If delivered by hand, when so delivered;
- b. If sent by post, on the third business day following posting;
- c. In the case of a communication by facsimile, when transmitted with no indication of incomplete transmission to the recipient's last known facsimile number.

**21.2** Notices may not be sent by email. Notices, communications, documents or demands shall be given by the Account Holder at the addresses/numbers shown in these Terms and Conditions.

**21.3** Without prejudice to any other means of service, notices, communications, documents or demands given by Earthquip Group Ltd will be deemed to have been made, or sent (as appropriate) when delivered by hand, posted by ordinary post or sent by facsimile to the Account Holder's address or fax number, as the case may be, last known to Earthquip Group Ltd.

**22 Exclusions**

**22.1** No provision, other than those which are mandatory, shall be implied by statute or at common law or otherwise into these Terms and Conditions against Earthquip Group Ltd.

**22.2** The Account Holder acknowledges that it has not been induced to enter into these Terms and Conditions by any representation made by or on behalf of Earthquip Group Ltd and relies solely on its own judgement in accepting any Goods pursuant to these Terms and Conditions.

**23 Guarantee and Security**

**23.1** In consideration of Earthquip Group Ltd entering into these Terms and Conditions at the Guarantors' request, the Guarantors (and if more than one, then the Guarantors jointly and severally) unconditionally and irrevocably guarantee to and indemnify Earthquip Group Ltd as set out in the Personal Guarantee provision on the front page of these Terms and Conditions.

**23.2** The Account Holder and the Guarantors each grant to Earthquip Group Ltd a general Security Interest in all of the Account Holder's or that Guarantor's present and after acquired property on the latest Auckland District Law Society General Security Agreement terms as at the date of these Terms and Conditions. The provisions of clause 12 will apply to the general Security Interest granted by the Account Holder and the Guarantors including for clarity any acknowledgments by the Account Holder which are binding upon the Guarantors as if they were the Account Holder.

**23.3** Without limiting the provisions of clause 23.2, Earthquip Group Ltd may from time to time require the Account Holder and/or the Guarantors to provide additional security for the Account Holder's Earthquip Group Ltd Account. The provisions of clause 12 will apply to such additional security in all respects including for clarity any acknowledgments by the Account Holder which are binding upon the Guarantors as if they were the Account Holder.

**23.4** Execution of securities of any nature between the Account Holder and Earthquip Group Ltd shall not in any way affect or prejudice Earthquip Ltd's rights whether under these Terms and Conditions or otherwise.

**23.5** Words in this clause shall, if the context permits, have the meanings given to them by virtue of the PPSA.

**23.6** In addition to the security set out in this clause, the Guarantors and the Account Holder each agree that:

- a. The Guarantors and the Account Holder mortgage all properties in which they have an interest (whether now or at any time in the future) to Earthquip Group Ltd. The mortgage will be on terms contained in the latest Auckland District Law Society all obligations mortgage form.
- b. Earthquip Group Ltd may, at any time until the mortgage is registered against the properties, caveat all or any of the properties to protect Earthquip Ltd's interest in the properties pursuant to this clause.
- c. The Guarantors and the Account Holder irrevocably appoint Earthquip Group Ltd and each of its directors (jointly and severally) to be their attorney to sign in their names and on their behalf any document required to effect registration of the mortgage against the title to all or any of the properties.

