



Terms and Conditions

1. Applicability.

(a) These Terms and Conditions (these “**Terms**”) and the accompanying rental or sale confirmation (the “**Confirmation**” and, together with these Terms, the “**Agreement**”) govern the rental or sale of the equipment and any additional or replacement parts or materials relating thereto (collectively, the “**Goods**”), as well as any labor provided for transportation, service, or repair of the rented or sold Goods (collectively, the “**Services**”), by Powerscreen of Northern California Inc (“**Company**”) to the customer named on and executing the Confirmation (“**Customer**”). Customer and Company are together referred to herein as the “**Parties**” and individually as a “**Party**”

(b) The Agreement comprises the entire agreement between the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The Agreement supersedes any of Customer’s general terms and conditions regardless of whether or when Customer has submitted its purchase order or such terms. Company expressly rejects Customer’s general terms and conditions, and fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions or serve to modify or amend these Terms or the Agreement. Acceptance of the Confirmation by Customer (which shall be deemed accepted should Customer not object in writing within 7 days of receipt of the Confirmation) is a prerequisite to the rental or purchase of the Goods or Services and shall operate as an acceptance of these Terms, which are expressly incorporated into the Confirmation.

(c) These Terms shall not be varied in any way unless such variation is expressly incorporated in writing from an officer of the Company, as defined in 17(d). Except as stated otherwise, tenders or quotations by Company that differ from the terms of the Agreement shall be deemed to have been withdrawn 30 days following the date upon which they were given.

2. Inspection.

(a) Customer shall inspect the Goods upon receipt and is responsible for signing a Bill of Lading for the haulage company to document the condition in which the Goods are received. Customer is responsible for signing the Bill of Lading whether the Goods are delivered by Company, delivered by a third party haulage company, or are collected by Customer at Company’s premises. Customer will be deemed to have accepted the Goods unless Customer notifies Company in writing of any Nonconforming Goods (as defined below) and furnishes such written evidence, photographic evidence, or other documentation to Company at the time of such notification. “**Nonconforming Goods**” means Goods that are different from and inferior to those described in the Confirmation.

(b) If Customer timely (within 24 hours of delivery) notifies Company of any Nonconforming Goods, Company shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the price paid by Customer for such Nonconforming Goods, together with any reasonable third-party shipping and handling expenses actually incurred and paid by Customer directly in connection therewith. If Company exercises its option to replace such Nonconforming Goods, Customer shall ship, at its expense and risk of loss, the Nonconforming Goods to Company, and Company shall, after receiving Customer’s shipment of Nonconforming Goods, ship to Customer, at Customer’s expense and risk of loss, the replaced Goods.

(c) Customer acknowledges and agrees that the remedies set forth in Section 2(b) are Customer’s exclusive remedies for Nonconforming Goods. Except as provided under Section 2(b), all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased under the Agreement to Company, except that Customer may be entitled to return parts that Company maintains a stock of, subject to a restocking fee.

3. Representations. Customer represents and warrants for the benefit of Company, the following:

(a) Customer is duly licensed and qualified under all applicable laws to (i) conduct its business, (ii) purchase, maintain and operate the Goods, and (iii) enter into and perform the Agreement.

(b) Customer has full power and authority to enter into the Agreement, carry out its obligations thereunder, and consummate the transactions contemplated thereby. The Agreement has been duly executed and delivered by Customer, and constitutes a legal, valid, and binding obligation of Customer enforceable against Customer in accordance with its terms.

(c) The execution, delivery, and performance by Customer of the Agreement will not require the consent of any party, result in any lien on any Goods, or conflict with the organizational documents of Customer, any provision of applicable law, or any instrument by which Customer is bound.

(d) There are no actions pending or threatened against or by Customer challenging the transactions contemplated by the Agreement and no circumstances exist that may give rise to such an action.

(e) Customer will pay all required sales tax at the consummation of a transaction for Goods, unless Customer notifies Company of a valid exemption to paying such sales tax at least 5 days prior to the transaction, and any overpayment of sales tax by Customer when a valid exemption exists is the sole responsibility of Customer to recover under the applicable laws.

4. Covenants. Customer shall at all times during the Term (as defined below):

(a) maintain and operate the Goods in compliance with all applicable laws;

(b) maintain in full force and effect all permits required to continue conducting its business, including to rent, purchase, maintain and operate the Goods in the manner contemplated under the Agreement;

(c) pay, and indemnify and hold Company harmless from, all assessments, license fees, and sales, use, property, excise, and other taxes and charges (other than gross or net income taxes) arising out of or in connection with the Agreement, the consummation of the transactions contemplated therein, or the shipment, possession, ownership, maintenance, use, delivery, or operation of the Goods;

(d) keep the Goods free and clear of all liens;

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(e) not enter into any re-rental of any portion of the Goods without Company's prior written consent, which consent may be withheld in Company's sole discretion; provided that the Parties expressly agree that Customer shall remain liable to Company under the Agreement for any re-rental permitted in writing by Company and that such re-rental shall not relieve Customer of its obligations under the Agreement.

5. Use of the Property.

(a) No marking of any kind shall be placed on any of the Goods by Customer except with the prior written consent of Company. Any such marking placed on the Goods by Customer shall be removed at Customer's expense on or before the expiration or earlier termination of the term of any rental agreement for such Goods as set forth in the Confirmation (the "Term"). Customer shall, at Customer's expense and to Company's satisfaction, place and maintain on each of the Goods those identifying marks reasonably required by Company.

(b) The Parties intend that the Goods shall remain at all times "personal property" and not be deemed to be a "fixture" under applicable law, even if the Goods, or any portion thereof, may be or become affixed or attached to real property or any improvements.

(c) Customer shall operate the Goods exclusively for their intended purpose in connection with Customer's business. Customer shall not operate or permit the operation of any of the Goods in an unsafe or improper manner, nor shall Customer allow maintenance or repairs of rented Goods by Customer or others contracted by Customer to perform such maintenance or repairs to be done in an unsafe or improper manner. Customer shall operate the Goods within manufacturer's specifications, and any required maintenance or repairs caused by improper operation of the Goods shall be paid for by Customer.

(d) Customer, at its own expense, shall maintain all records, logs, and other materials related to the Goods (the "Records") for at least three years from creation or receipt by Customer (whichever is later), using practices and with a degree of care, comprehensiveness, and accuracy consistent with industry practice, but in no event less than reasonable practices and a reasonable degree of care, comprehensiveness, and accuracy, and as required by applicable law, and promptly furnish to Company such Records as may be requested by Company for any purpose.

(e) Company's employees and agents shall have the right of access to Customer's premises to inspect the Goods and the Records on reasonable notice and during regular business hours. In the Event of Default, as described in Section 10, Company's employees and agents shall have the right of access to Customer's premises to inspect, recover, disable, or take any other action consistent with Company's remedies to a Notice of Default, without prior notice to Customer, and Customer shall facilitate Company's employees or agents access to the same.

6. Maintenance of and modification to Property.

(a) Customer, at its sole expense and consistent with standard industry practice for similar equipment, Customer's maintenance practices for its other similar equipment, and applicable insurance requirements, shall maintain, service, and repair the Goods and keep the Goods in compliance with any vendor's or manufacturer's specifications and applicable law, in serviceable and operable condition, free of broken, damaged, or missing parts, and suitable for the commercial use originally intended, ordinary wear and tear excepted. All maintenance, service, and repair of the Goods shall be done to standards and with parts of like kind and at least equal quality to those items being maintained, serviced, or repaired.

(b) If, during the Term, any part of the Goods is lost, stolen, damaged beyond repair, or otherwise permanently rendered unfit for use, Customer, at its sole expense, shall promptly replace or cause to be replaced such part with one or more replacement parts. Customer shall cause such Goods after the replacement to be in as good an operating condition as, and have a value, remaining useful life, and utility at least equal to the value, remaining useful life, and utility of the Goods before the replacement (assuming such Goods to have been in the condition required by the terms of the Agreement).

(c) Customer, at its sole expense, shall make any alteration or modification to the Goods, including without limitation the replacement or addition of any component, that is required or supplied by Company or the manufacturer or necessary to comply with applicable law. Customer shall notify an officer of the Company (as defined in 17(d)) within thirty days of learning that an alteration or modification is required by applicable law.

(d) If Customer incorporates or installs any part in or attaches any part to the Goods, including without limitation any replacement or addition, then immediately on any part becoming incorporated or installed in or attached to the Goods, without further act or any cost to Company, such part is deemed part of the Goods to the same extent as though originally incorporated or installed in or attached to the Goods, title to such part vests in Company, and such part becomes subject to the Agreement. Customer shall cause all parts to be free and clear of any lien.

7. Title. For purchases of the Goods by Customer, title passes to Customer upon receipt by Company of full payment for the Goods. As collateral security for the payment of the purchase price of the Goods, Customer hereby grants to Company a lien on and security interest in and to all of the right, title, and interest of Customer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this Section 7 constitutes a purchase money security interest under the California Uniform Commercial Code.

8. Loss.

(a) From the date of the Confirmation through the expiration or earlier termination of the Term, Customer shall bear all risk of loss, damage, destruction, theft, taking, confiscation, or requisition, partial or complete, of or to the Goods or its use, however caused or occasioned (a "Loss"). Customer shall notify Company in writing within two working days of learning of any such Loss.

(b) If Company determines in its sole discretion that a Loss has materially impaired the Goods affected or their use, Customer shall pay, either personally or via a third party insurance policy covering the Loss, all rent and other amounts due prior to the Loss with respect to such Goods plus the amount of any Stipulated Loss Value of the Goods determined in accordance with

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Exhibit A hereto (collectively, the “**Loss Payment**”). The Agreement to rent any Goods shall terminate with respect to any materially impaired Goods upon receipt by Company of the corresponding Loss Payment. Upon such receipt and termination, Company shall deliver to Customer a duly executed quitclaim bill of sale conveying title to such Goods to Customer, subject to Customer acceptance of the title.

(c) If Company determines in its sole discretion that a Loss has not materially impaired or affected the use of the Goods, the Agreement shall continue with respect to such Goods as though no Loss had occurred; and Customer shall at its sole expense promptly repair or cause to be repaired such Goods to the condition in which such Goods are required to be maintained hereunder, to the reasonable satisfaction of Company. For the avoidance of doubt, there shall be no abatement of rent or rent credit for any period in which the Goods are out of operation, being repaired or otherwise, in connection with any maintenance, repairs, or mandatory modifications to such Goods.

9. Insurance.

(a) From the date of the Confirmation through the expiration or earlier termination of the Term, Customer, at its sole expense, shall provide and maintain for such insurance against loss, theft, and damage (collectively, the “**Property Insurance**”) in an insured amount at least equal to the greater of (i) the Stipulated Loss Value or (ii) the full replacement value of the Goods and in a form, and with companies, satisfactory to Company, including, without limitation, a Breach of Warranty Clause, the waiver of any subrogation rights against Company, and the insurer’s agreement to give Company thirty days’ prior written notice before cancellation or material change of such Property Insurance. Customer shall name Company (or shall cause Company to be named) as loss payee for such Property Insurance.

(b) During the Term, Customer, at its sole expense, shall provide and maintain commercial general liability insurance (the “**Liability Insurance**”) in an amount no less than **\$3,000,000** and such other commercial general liability coverages as are ordinarily procured by prudent persons who operate similar equipment in similar businesses and in a form, and with companies satisfactory to Company, including without limitation, the policy shall be primary and non-contributory with insurance carried by Company and the insurer’s agreement to give Company thirty days prior written notice before cancellation or material change of such Liability Insurance. Company shall be named as an additional insured without imposing on Company any expense in connection with such Liability Insurance.

(c) On or before the date of the Confirmation, Customer shall provide Company with insurance certificates accurately evidencing that the Property Insurance and the Liability Insurance are in effect. Customer shall provide Company with insurance certificates accurately evidencing the renewal of the Property Insurance and the Liability Insurance promptly upon such renewal. Customer shall otherwise promptly provide Company with insurance certificates evidencing that the insurance coverage required under the Agreement is in effect as Company may request from time to time.

10. Default.

(a) Each of the following events is an “**Event of Default**” under the Agreement: (i) Customer fails to make a payment to Company when due pursuant to the Agreement; (ii) Customer defaults in the observance or performance of any other term, covenant, or condition of the Agreement, on Customer’s part to be observed or performed; (iii) Customer’s interest or any portion thereof in the Agreement devolves on or passes to any other party, whether by operation of law or otherwise; (iv) Customer (A) becomes insolvent, (B) is generally unable to pay, or fails to pay, its debts as they become due, (C) files, or has filed against it, a petition for voluntary or involuntary bankruptcy, (D) makes or seeks to make a general assignment for the benefit of its creditors, or (E) applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property or business; or (v) Customer sells, transfers, or disposes of all or substantially all of its assets or the property of its business, or merges or consolidates with any other entity.

(b) If an Event of Default occurs, Company may, in its sole discretion, exercise one or more of the following remedies: (i) declare the Agreement in default; (ii) terminate the Agreement in whole or in part; (iii) take possession of, or render unusable, any or all of the Goods wherever they may be located, without demand or notice, without any court order or other process of law, and without liability to Customer for any damages occasioned by such action; (iv) require Customer to deliver any or all of the Goods in the condition required under the Agreement to a location designated by Company and, for each day that Customer fails to return any Goods, Company may demand an amount equal to the rent for such Goods, prorated on the basis of a twenty-two weekday (i.e., Monday-Friday) month, in effect immediately prior to such Event of Default; (v) proceed by court action to enforce performance by Customer of the Agreement and/or to recover all damages and expenses incurred by Company by reason of any Event of Default; (vi) sell any or all of the Goods at public or private sale, with or without notice to Customer or advertisement, or otherwise dispose of, hold, use, operate, rent to others, or keep idle such Goods, and without any duty to account to Customer for such action or inaction or for any proceeds with respect thereto, and apply the net proceeds thereof (after deducting all expenses, including legal fees and costs, incurred in connection therewith) to the amounts owed to Company under the Agreement, provided, however, that Customer shall remain liable to Company for any deficiency that remains after any sale, lease, or rental of such Goods; and/or (vii) exercise any other right or remedy available to Company at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Any attempts made or actions taken by Customer to prevent Company’s access to, repossession of, or disposal of the Goods under this provision shall be deemed conversion under the applicable laws.

11. Indemnity.

(a) Customer shall indemnify, defend, and hold harmless Company, its successors and assigns, and its affiliates and their successors and assigns and the respective directors, officers, managers, members, employees, consultants, financial advisors, counsel, accountants, auditors, and other agents of Company, its successors and assigns, Company’s affiliates, and their successors and assigns (collectively, “**Indemnitees**”) against any and all losses, injury, death, damages, liabilities, claims, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatsoever kind and nature, including reasonable attorneys’ fees

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and the cost of enforcing any right to indemnification under the Agreement and the cost of pursuing any insurance providers incurred by Indemnitees relating to, arising out of, or in connection with the transactions contemplated by the Agreement, including without limitation:

- (i) the selection, design, manufacture, delivery, purchase, acceptance, or rejection of any of the Goods or the ownership of any of the Goods;
- (ii) the rental, possession, maintenance, use, condition, repair, return, disposition, operation, storage, or transportation of any of the Goods or any modifications thereto (including, without limitation, latent and other defects, whether or not discoverable by Company or Customer);
- (iii) any inaccuracy in or breach of any of the representations of Customer contained in the Agreement;
- (iv) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Customer pursuant to the Agreement;
- (v) any assertion of the infringement of patent, trade secret, trademark, copyright, or other intellectual property rights of third parties; and
- (vi) any improper use, operation, maintenance, or repair of the Goods by Customer or an authorized party of Customer.

12. Return of Property.

(a) If Customer does not exercise a Purchase Option (as defined below) for the Goods, Company may arrange any suitable transportation for the Goods to a location designated by Company, and Customer shall be liable for all costs incurred by such transportation.

(b) Customer shall cause any of the Goods returned under the Agreement to be in at least as good condition as when delivered to Customer, ordinary wear and tear excepted, including without limitation the removal of any marks that Customer is permitted to apply to the Goods, complete with all parts, and in compliance with applicable laws. Any repairs to such parts necessary on return to restore them to a condition as good as when such Goods delivered, and any replacement of such parts required on return by their unfitness for use or damage beyond repair, shall be charged to Customer at an appropriate list price plus labor, including travel time, mileage, and incidentals at normal rates charged by Company.

(c) At the sole discretion of Company, and upon the return of any of the Goods under the Agreement, Customer may be required to deliver or cause to be delivered to Company all records relating to the operation and maintenance of the Goods, including all maintenance records, logs, certificates, and data in Customer's possession or required to be maintained by applicable law.

(d) If, upon the expiration or earlier termination of the Term, Customer does not return the Goods to Company in the condition required by and otherwise in accordance with the terms and conditions of the Agreement and if Customer continues to use the Goods, Customer shall continue to comply with all the terms and conditions of the Agreement with respect to such Goods, and shall pay 125% of the prorated daily rent for each week day the Customer uses the Goods until the date on which Company takes possession of the Goods from Customer in the manner required under the Agreement ("**Holdover Rent**"). Nothing contained in this Section 12(d), including Customer's payment of Holdover Rent, shall (i) constitute a waiver of Customer's failure to perform any obligation under the Agreement; or (ii) give Customer the right to retain possession of any Goods after the expiration or earlier termination of the Term.

13. Renewal Option. Provided that no Event of Default shall have occurred and be continuing, Customer shall have the option at the conclusion of the Term to renew the rental of the Goods under the Agreement (the "**Renewal Option**"); provided that Customer notifies Company in writing in accordance with Section 17(b) of Customer's intention to exercise the Renewal Option no less than thirty days prior to the expiration or earlier termination of the Term.

14. Purchase Option. Provided that no Event of Default shall have occurred and be continuing, Customer shall have the option to purchase the Goods under the Agreement (the "**Purchase Option**"); Upon Customer's payment in full to Company of the purchase price for the Goods as set forth in the Confirmation to Company, and payment to Company by Customer of any other amounts then due and owing, Company shall transfer the Title to the Goods to Customer, as is, where is, without recourse, representation, or warranty of any kind, express or implied.

15. EXCLUSION OF WARRANTIES. COMPANY MAKES NO WARRANTY WHATSOEVER RELATING TO THE GOODS, INCLUDING WITHOUT LIMITATION ANY: (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, INCLUDING ANY SPECIFICATIONS OR OTHER CAPABILITIES OF THE GOODS AS HELD OUT BY THE MANUFACTURER; (c) WARRANTY AGAINST INTERFERENCE; OR (d) WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, TRADEMARK, TRADE SECRET, OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

16. Limitation of Liability.

(a) IN NO EVENT SHALL COMPANY OR ANY OF ITS REPRESENTATIVES OR AFFILIATES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THE AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

(b) COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL

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AMOUNTS PAID BY CUSTOMER TO COMPANY PURSUANT TO THE AGREEMENT IN THE ONE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, OR \$100,000, WHICHEVER IS LESS.

17. Miscellaneous.

(a) Subject to any limitations and other provisions contained in the Agreement, the representations of Customer contained in Section 3 survive indefinitely. All covenants and agreements of Customer contained herein, including without limitation Customer's obligations under Section 11, survive indefinitely.

(b) Each Party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under the Agreement (each, a "Notice") in writing. Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email of a PDF document (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (i) on receipt by the receiving Party, and (ii) if the Party giving the Notice has complied with the requirements of this Section 17(b).

(c) If any term or provision is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability does not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(d) No amendment to the Agreement is effective unless it is in writing and signed by an authorized representative of each Party. Authorized representatives of the Company include the Chief Financial Officer, the Chief Operating Officer, and any other individual delegated authority, in writing, to make such amendments between the Company and the Customer of this Agreement.

(e) No waiver under the Agreement is effective unless it is in writing, identified as a waiver under the Agreement and signed by an officer of the Party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion. Neither any failure or delay in exercising any right, remedy, power, or privilege, or in enforcing any condition under the Agreement, nor any act, omission, or course of dealing between the Parties constitutes a waiver or estoppel with respect to any right, remedy, power, privilege, or condition arising from the Agreement.

(f) All rights and remedies of Company provided in the Agreement are cumulative and not exclusive, and the exercise by Company of any right or remedy does not preclude the exercise by Company of any other rights or remedies that may now or subsequently be available to Company at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

(g) Customer acknowledges that a breach or threatened breach by Customer of any of its obligations under the Agreement would give rise to irreparable harm to Company for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by Customer of any such obligations, Company will, in addition to any and all other rights and remedies that may be available to Company in respect of such breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(h) Customer may not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Company. Any purported assignment or delegation in violation of this Section 17(h) is null and void. No assignment or delegation relieves Customer of any of its obligations under the Agreement.

(i) This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.

(j) Subject to the final sentence of this Section 17(j), the Agreement benefits solely the Parties and their respective successors and permitted assigns and nothing in the Agreement, express or implied, confers on any other party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason hereof. The Parties hereby designate the Indemnitees other than Company as third-party beneficiaries of Section 11, having the right to enforce Section 11.

(k) The Agreement, and all matters arising out of or relating thereto, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of California, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California.

(l) Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to the Agreement, in any forum other than the courts of the State of California, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the courts of the State of California. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(m) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT OR ANY EXHIBITS OR SCHEDULES ATTACHED HERETO IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(n) No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement (except for any obligations of Customer to make payments to Company hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, tornado, epidemic, pandemic, or explosion; (c) war, invasion, hostilities

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(whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; and (e) embargoes or blockades in effect on or after the date of the Agreement. The Party impacted by the Force Majeure Event(s) shall give notice to the other Party within seven days of the Force Majeure Event, stating the period of time the occurrence is expected to continue. The Party impacted by the Force Majeure Event(s) shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event(s) are minimized and shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

Exhibit A

STIPULATED LOSS VALUE OF THE GOODS

1. Purpose

This Exhibit establishes the Stipulated Loss Value of each item of Goods rented by Company to Customer under the Agreement. The Parties acknowledge that, following the total loss, theft, destruction, confiscation or material impairment of an item of Goods, Company's actual loss may be difficult to determine precisely. The Stipulated Loss Value is intended to represent a reasonable estimate of Company's anticipated loss, including the loss of its investment in the Goods, anticipated residual value and costs associated with replacing or recovering the Goods. It is not intended to constitute a penalty.

2. Original Equipment Value

For each item of Goods, the "Original Equipment Value" or "OEV" means the amount specified as the "Original Equipment Value", "Equipment Value", "Insurance Value" or similar description in the applicable Confirmation. Unless expressly stated otherwise in the Confirmation, the Original Equipment Value shall include:

1. the original or current replacement cost of the Goods;
2. all factory-installed options, attachments and accessories;
3. transportation and freight costs incurred in delivering the Goods to Company;
4. import duties, tariffs and non-refundable taxes;
5. dealer preparation, assembly and commissioning costs; and
6. any other costs reasonably incurred by Company in placing the Goods into service.

The applicable Confirmation must state an Original Equipment Value for each individual item of Goods by make, model, serial number and equipment stock number, if available.

3. Scheduled Stipulated Loss Value

The Stipulated Loss Value of each item of Goods shall be the Original Equipment Value multiplied by the applicable percentage shown below. The applicable percentage shall be determined by the number of complete months elapsed from the original date on which the Goods were first placed into rental service by Company, rather than solely by the duration of the Customer's current rental.

Equipment age at date of Loss	SLV percentage of OEV
0 to 6 complete months	100%
7 to 12 complete months	95%
13 to 18 complete months	90%
19 to 24 complete months	85%
25 to 30 complete months	80%
31 to 36 complete months	75%
37 to 42 complete months	70%
43 to 48 complete months	65%
49 to 54 complete months	60%
55 to 60 complete months	55%
61 to 72 complete months	50%
73 to 84 complete months	45%
More than 84 complete months	40%, or the fair market value immediately before the Loss if greater

For the avoidance of doubt:

1. a partial month shall be disregarded when determining the applicable percentage;
2. the SLV shall not fall below 40% of the OEV unless Company expressly agrees otherwise in the Confirmation;
3. the SLV percentage shall not be reduced for excessive usage, poor maintenance, damage or abnormal wear;
4. the Customer's payment of rent does not create any ownership interest in the Goods or automatically reduce the SLV, except through application of the schedule above; and
5. the applicable SLV shall be calculated as at the date on which the Loss occurred, or, if that date cannot reasonably be determined, the date on which Company was notified of or became aware of the Loss.

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4. Illustrative calculation

For an item of Goods with an Original Equipment Value of **\$675,000**:

Equipment age at date of Loss	Applicable percentage	SLV
6 months	100%	\$675,000
18 months	90%	\$607,500
30 months	80%	\$540,000
42 months	70%	\$472,500
60 months	55%	\$371,250
72 months	50%	\$337,500
84 months	45%	\$303,750

5. Current Replacement Cost safeguard

If, at the date of the Loss, the documented cost to Company of acquiring a replacement item of equipment of the same or reasonably equivalent make, model, specification, capacity, condition and utility exceeds the Scheduled Stipulated Loss Value, Company may use the Current Replacement Cost instead of the Scheduled Stipulated Loss Value, provided that Company supplies Customer with reasonable supporting documentation.

“Current Replacement Cost” means the reasonable cost to Company of:

1. acquiring replacement equipment of equivalent specification and utility;
2. acquiring equivalent attachments and accessories;
3. transporting and delivering the replacement equipment to the location designated by Company;
4. paying applicable tariffs, duties and non-refundable taxes;
5. preparing, assembling, testing and commissioning the replacement equipment; and
6. completing any required regulatory, telematics or safety modifications.

6. Loss Payment

Following a Loss that Company determines has materially impaired the Goods or their use, Customer shall pay Company the following amounts, collectively the “Loss Payment”:

1. the applicable Stipulated Loss Value;
2. all rent accrued and unpaid through the date Company receives the Loss Payment in full;
3. all other amounts accrued and unpaid under the Agreement;
4. all applicable sales, use, rental, property, excise and similar taxes;
5. reasonable transportation, inspection, appraisal, storage, recovery, repossession and disposal costs;
6. reasonable third-party legal, collection and enforcement costs, to the extent permitted by applicable law;
7. the cost of recovering environmental contaminants, Customer property or waste from the Goods;
8. any unpaid deductible under Customer’s insurance policy; and
9. interest on overdue amounts at the rate specified in the Agreement or Confirmation, subject to the maximum rate permitted by applicable law.

7. Taxes

All Stipulated Loss Values stated or calculated under this Exhibit are exclusive of applicable taxes unless the Confirmation expressly states that the OEV is tax-inclusive.

Customer shall pay any sales, use, rental, property, excise or similar tax arising from:

1. the rental of the Goods;
2. the Loss Payment;
3. any transfer of title to Customer;
4. the disposal or salvage of the Goods; or
5. any other transaction arising from the Loss, except for taxes imposed on Company’s net income. To prevent double recovery, any tax already included within the OEV or Current Replacement Cost shall not be charged separately as part of the Loss Payment.

8. Insurance proceeds

Customer’s obligation to pay the Loss Payment is absolute and shall not be conditional upon:

1. Customer maintaining the required insurance;
2. Customer submitting an insurance claim;

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3. an insurer accepting or paying a claim; or
4. the timing or amount of any insurance payment.

Any insurance proceeds paid directly to Company in respect of the Loss shall be credited against the Loss Payment when received by Company.

Customer remains liable for:

- any policy deductible;
- any uninsured amount;
- any insurer shortfall;
- any excluded loss;
- any delayed payment; and
- any amount by which the Loss Payment exceeds the net insurance proceeds received by Company.

Any insurance proceeds received by Customer relating to the Goods shall be held for application to the Loss Payment and promptly remitted to Company, to the extent permitted by applicable law.

9. Salvage and recoveries

Following payment of the Loss Payment in full, Company may, at its discretion and subject to applicable law:

1. transfer its interest in the damaged Goods to Customer on an "as is, where is" basis;
2. retain, recover, repair, sell, scrap or otherwise dispose of the damaged Goods; or
3. authorize the Customer or insurer to dispose of the damaged Goods.

If Company retains or receives net salvage proceeds, Company shall credit those proceeds against the Loss Payment, but only to the extent that the proceeds exceed the reasonable costs incurred by Company in:

- locating and recovering the Goods;
- transporting the Goods;
- securing and storing the Goods;
- inspecting and appraising the Goods;
- removing Customer property, waste or contamination;
- repairing or preparing the Goods for sale;
- advertising and selling the Goods; and
- paying auction, brokerage, legal or disposal costs.

No salvage credit shall be due until Company has actually received cleared funds from the sale or disposal.

10. Subsequent recovery of stolen Goods

If Goods reported stolen are recovered after Customer or its insurer has paid the Loss Payment:

1. Company shall be entitled to take possession of the recovered Goods;
2. Customer shall promptly notify Company of the recovery;
3. Customer shall not use, sell, transfer, repair or dispose of the recovered Goods without Company's written consent;
4. Company may retain or dispose of the recovered Goods; and
5. any net recovery proceeds shall be treated in accordance with Section 9 of this Exhibit.

Company shall not be required to refund the Loss Payment merely because the Goods are later recovered. However, any net amount realized from the recovered Goods should be credited after deducting Company's reasonable recovery, repair, storage and disposal costs, to avoid double recovery.

11. Partial Loss

If Company determines that a Loss has not materially impaired the Goods or their use, the Customer shall not be required to pay the full SLV solely because of that Loss.

Instead, Customer shall remain responsible for:

1. all repair and replacement costs;
2. transportation and inspection costs;
3. manufacturer-required testing or certification;
4. diminution in value reasonably attributable to the Loss;
5. rental payments while the Goods are unavailable, where provided by the Agreement;
6. loss of use charges expressly permitted by the Agreement;
7. taxes; and
8. other amounts payable under the Agreement.

Company may treat a Loss as materially impairing the Goods where, acting reasonably:

- the Goods are lost or stolen and not recovered promptly;

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- the estimated repair cost exceeds **70% of the applicable SLV**;
- the Goods cannot be restored to substantially equivalent condition, value, useful life or utility;
- the manufacturer or insurer classifies the Goods as a total loss;
- continued operation would be unsafe or unlawful; or
- the repair period is commercially unreasonable in light of replacement availability.

12. Multiple items of Goods

Where the Confirmation includes more than one item of Goods:

1. the SLV shall be calculated separately for each item by serial number;
2. a Loss affecting one item shall not automatically constitute a Loss affecting all items;
3. attachments specifically allocated to an item shall be included in that item's OEV;
4. unattached accessories shall be valued separately if separately identified in the Confirmation; and
5. fleet-wide discounts shall not reduce the individual OEV unless expressly allocated in the Confirmation.

13. Usage adjustment

The scheduled SLV assumes operation within the usage allowance stated in the Confirmation.

If, at the date of Loss, the Goods have exceeded the permitted usage allowance, Company may not increase the SLV merely because of the excess usage.

However, the Customer shall remain liable for:

- contractual excess-hour charges;
- abnormal wear;
- overdue maintenance;
- missing components;
- damage unrelated to the casualty; and
- other amounts separately payable under the Agreement.

14. Payment and transfer of title

The Loss Payment shall be due within **10 business days** after Company issues its written calculation and supporting detail.

On receipt of the Loss Payment in full:

1. the rental of the materially impaired Goods shall terminate;
2. Company shall have no further obligation to provide replacement equipment unless separately agreed;
3. if Company elects to transfer the damaged Goods, title shall pass to Customer "as is, where is", without representation, recourse or warranty;
4. any transfer shall remain subject to insurer salvage rights and applicable law; and
5. Customer shall be responsible for all removal, transportation, registration, title and disposal costs.

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