

# FOILA® Silver End User Agreement (“Agreement”)

**THIS IS A LEGAL AGREEMENT BETWEEN YOU, THE END USER, (“YOU”) AND EQUIPMENT LIMITED (“EQUIPMENT LIMITED” OR “WE”) IN RELATION TO THE USE OF THE FOILA® MACHINE AND SUPPLY OF FOIL FOR USE IN THE FOILA® MACHINE. THIS AGREEMENT IS FOR A PERIOD OF TWENTY FOUR MONTHS FROM THE DATE THAT WE SUPPLY YOU WITH THE FOILA® MACHINE. BY SIGNING THIS AGREEMENT YOU CONFIRM THAT YOU HAVE READ AND AGREE TO THE TERMS OF THIS AGREEMENT. THE DATE ON WHICH YOU SIGN AND UNDER THIS AGREEMENT SHALL BE REFERED TO IN THIS AGREEMENT AS THE “EFFECTIVE DATE”.**

**1. SUPPLY OF FOILA® MACHINE.** In consideration of You purchasing a minimum of two rolls of REFOIL FOIL every month for a period of twenty four months from the EFFECTIVE DATE, We will supply and deliver to You a FOILA® MACHINE. This means that over the two year term of this Agreement You will have twenty four deliveries of REFOIL FOIL. (giving a total of forty eight rolls over the duration of the Agreement).

**2. PAYMENT.** Payment for each monthly delivery of REFOIL FOIL will be collected by Standing Order on the first working day of the month, unless otherwise specified. It is a condition of this Agreement that all such minimum payments for REFOIL FOIL be collected by Standing Order.

**3. PRICE.** The price of the monthly deliveries of REFOIL FOIL shall be the price published by Equipment Limited from time to time. Equipment Limited cannot guarantee a fixed price for the REFOIL FOIL for the duration of this Agreement due to the fluctuation in costs including fluctuations in fuel and metal market costs. All prices quoted are exclusive of VAT or other taxes, unless expressly indicated otherwise.

**4. IP RIGHTS.** The FOILA® MACHINE is protected by patents in various countries which are owned by or licensed to Equipment Limited. Furthermore, the FOILA® MACHINE contains and comprises proprietary information, embedded software and know how that is proprietary to Equipment Limited or its licensors and which may be protected by appropriate intellectual property laws. You may not disassemble or reverse engineer the FOILA® MACHINE or decompile or make any attempt to ascertain, derive or obtain the source code for the embedded software in the FOILA® MACHINE. “FOILA” and the Concentric Circle Logo are trade marks of Equipment Limited.

**5. TITLE.** Title to any FOILA® MACHINES provided to You under this Agreement shall at all times vest in and remain with Equipment Limited. You must not seek to sell, loan, hire, pledge or give the FOILA® MACHINE to any other person, nor should the FOILA® MACHINE be used and/or stored at any premise that You do not have unfettered access to. If You move premises You must notify Equipment Limited of Your new address. Title to the REFOIL FOIL supplied by Equipment Limited to You under this Agreement shall pass upon receipt of payment from You.

**6. RISK.** The FOILA® MACHINE is on loan to You. You are therefore responsible for maintaining the FOILA® MACHINE in good working order and responsible for carrying out any reasonable maintenance requested of You by Equipment Limited, from time to time.

**7. REPLACEMENT FOILA® MACHINE.** Equipment Limited will replace the FOILA® MACHINE in the event that it breaks down or ceases to work substantially in accordance with any performance specifications published by Equipment Limited, from time to time. If Your FOILA® MACHINE breaks down or fails to perform according to any performance specifications published by Equipment Limited, from time to time, and such break down or failure or reduced performance is, in Equipment Limited’s reasonable opinion, due to Your abuse of the FOILA® MACHINE or failure to maintain the FOILA® MACHINE (but not due to reasonable wear and tear) then You will need to compensate Equipment Limited for the damage to the FOILA® MACHINE. In such circumstances, Equipment Limited may choose not to provide You with a replacement FOILA® MACHINE and terminate this Agreement. Such compensation shall not exceed £400 in the first year, £300 in the second year of the term of this Agreement. **Use of foil that is not FOILA FOIL or not supplied and/or approved by Equipment Limited will void Your right to a replacement FOILA® MACHINE under this Agreement and may be considered by Equipment Limited as an abuse of the FOILA® MACHINE for the purposes of this clause and will also carry a charge of 3.5p per metre of the non approved foil used in the machine.**

**8. ADDITIONAL REFOIL FOIL ORDERS.** You may of course order additional supplies of REFOIL FOIL from Equipment Limited for use in the FOILA® MACHINE. The price of REFOIL FOIL in such additional orders will be the price published by Equipment Limited from time to time. Such additional orders of REFOIL FOIL shall be dispatched following payment in full and We shall endeavour to deliver within 7 days of receipt of such payment in full.

**9. PRODUCT SAFETY.** You will use the FOILA® MACHINE solely in accordance with the directions and safety instructions provided with it or provided to You by Equipment Limited from time to time. You will immediately notify Equipment Limited of any safety issues that arise through Your use of the

FOILA® MACHINE, including, but not limited to any design, mechanical, materials, workmanship, electrical, performance or functionality faults. As an employer You will have duties to maintain a safe work place for Your employees. You agree that You will conduct regular inspections (at least once a fortnight) of the FOILA® MACHINE and include the FOILA® MACHINE in any PAT testing or other Health and Safety inspections that You are required by law or regulation to undertake.

**10. NO OTHER WARRANTIES.** Equipment Limited does not warrant THE PERFORMANCE OR RESULTS OBTAINED BY YOU IN USING THE FOILA® MACHINE, or that the FOILA® MACHINE or REFOIL FOIL will meet Your requirements or that the operation of the FOILA® MACHINE will be uninterrupted or error free AND EQUIPMENT LIMITED EXPRESSLY disclaims any and all other warranties with respect to the Software, either express or implied, including but not limited to THE implied warranties of merchantability and fitness for a particular purpose.

**11. LIMITATION ON LIABILITY.** IN NO EVENT WILL EQUIPMENT LIMITED BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, OPPORTUNITIES OR CONTRIBUTIONS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, GOOD WILL, OR OTHER PECUNIARY OR NON-PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE FOILA® MACHINE AND REFOIL FOIL, EVEN IF EQUIPMENT LIMITED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL EQUIPMENT LIMITED’S LIABILITY EXCEED THE AMOUNT PAID BY YOU TO EQUIPMENT LIMITED UNDER THIS AGREEMENT.

**12. DEATH OR PERSONAL INJURY.** Nothing in this Agreement shall exclude or restrict Equipment Limited’s liability for fraudulent misrepresentation or fraudulent misstatement or for death or personal injury resulting from its negligence.

**13. TERM AND TERMINATION.** This Agreement is effective for two years from the EFFECTIVE DATE or unless terminated earlier at Equipment Limited’s option upon your failure to comply with any material term of this Agreement, including but not limited to Your failure to pay for the minimum REFOIL FOIL deliveries under clause 3. Notwithstanding the foregoing, Equipment Limited may terminate this Agreement without cause by giving You two months notice of such termination. In the event that the price of the REFOIL FOIL increases by more than 20% in any given 12 month anniversary period You may terminate this Agreement by giving Equipment Limited two months notice in writing of such termination. Within 14 days of termination or expiration of this Agreement, for any reason, You will return the FOILA® MACHINE to Equipment Limited in suitable packaging to ensure no damage is caused and if You do not do so, Equipment Limited shall have the right to enter Your premises during business hours, upon giving You not less than 14 days written notice, to collect the FOILA® MACHINE.

**14. MISCELLANEOUS.** This and any documents provided by Equipment Limited under this Agreement shall constitute the entire Agreement between You and Equipment Limited in relation to the FOILA® MACHINE and supply of the REFOIL FOIL, and excludes any prior agreement or arrangement made between You and Equipment Limited in relation to the FOILA® MACHINE and supply of the REFOIL FOIL. This Agreement may only be modified in writing and signed by You and Equipment Limited. If any court of competent jurisdiction declares any term of this Agreement void or unenforceable, that declaration shall have no effect on the remaining terms hereof. The failure by either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach of this Agreement will not be deemed a waiver by that party as to the subsequent enforcement of rights or subsequent actions in the event of future breaches. Neither party shall be liable for any delay, non-performance or related damages if such delay or non-performance was due to causes beyond its reasonable control, including, but not limited to acts of God, civil emergencies, electrical power failure, loss of communications, or the delay of the other party or third parties.

**15. GOVERNING LAW.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of England and Wales. The parties submit to the non-exclusive jurisdiction of the English courts, provided that Equipment Limited shall be entitled to commence proceedings of whatever nature to protect its intellectual property rights and confidential information in any jurisdiction which will accept suit.