

## TERMS AND CONDITIONS FOR EQUIPMENT HIRE

THE EQUIPMENT IS RENTED ON THE FOLLOWING TERMS AND CONDITIONS AGREED BY THE CUSTOMER. BY SUBMITTING A PURCHASE ORDER, YOU CONFIRM THAT YOU UNDERSTAND, ACCEPT AND AGREE TO THE TERMS AND CONDITIONS SET OUT IN THIS AGREEMENT.

YOUR PARTICULAR ATTENTION IS DRAWN TO CLAUSE 12.

### Parties

- (1) CELSIUS HIRE LTD incorporated and registered in England and Wales with company number: 12763272 whose registered office is at: Unit 3 Vista Place, Ingworth Road, Poole, Dorset, United Kingdom, BH12 1JY (the 'Hirer'); and
- (2) the Customer as set out in the Confirmation Form.

### AGREED TERMS

#### 1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this Agreement.

**Agreement:** means the terms and conditions set out in this Agreement.

**Commencement Date:** the date from which the Minimum Hire Period shall commence as set out in the Confirmation Form or such other date as agreed in writing between the parties from time to time.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Contract:** the contract between the Hirer and the Customer for the Hire of the Equipment which shall comprise this Agreement and the Confirmation Form.

**Collect:** shall mean the collection of the Equipment from the Delivery Address by the Hirer (or its duly authorised representative) and **collected, collection and collecting** shall be construed accordingly.

**Confirmation Form:** means the Hirer's confirmation statement confirming the order details for the Contract which shall be issued separately to the Customer.

**Delivery:** the transfer of physical possession of the Equipment from the Hirer (or its representative or contractor) to the Customer at the Delivery Address and **delivered and delivery** shall be construed accordingly.

**Delivery Address:** the Customer's premises at which the Equipment is to be located as set out in the Confirmation Form.

**Delivery Date:** the date on which the Equipment is Delivered by the Hirer to the Delivery Address or Collected by the Customer from the Hirer's site. The Hire Period, as set out in the Confirmation Form, shall commence on the Delivery Date, unless agreed otherwise by the Hirer.

**Dry Hire:** means the hire of the Equipment without installation by the Hirer.

**Equipment:** the items of equipment listed in the Confirmation Form, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

**Hire Period:** has the meaning given to it in clause 4.3.

**Hirer's Site:** the Hirer's offices or warehouses or such other address of the Hirer as notified to the Customer from time to time.

**Minimum Hire Period:** means the period of hire of the Equipment as set out in the Confirmation Form and pursuant to clause 4.

**Pick-Up:** means the pick-up of the Equipment by the Customer from the Hirer's Site.

**Purchase Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form.

**Rental Payments:** the consideration payable by the Customer in exchange for hire of the Equipment, the amount of which is as set out in the Confirmation Form.

**Risk Period:** the period during which the Equipment is at the sole of the risk of the Customer as set out in clause 9.2.

**Total Loss:** due to the Customer's default the Equipment is, in the Hirer's sole and absolute discretion or the sole and absolute discretion of the Hirer's insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

- 1.2 Clause and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The Confirmation Form forms part of the Contract and any reference to the Contract includes the Confirmation Form.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 Unless expressly provided otherwise in this Agreement, reference to legislation, a legislative provision or subordinate legislation is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to **writing** or **written** includes email.

- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Equipment Hire**

- 2.1 The Hirer shall hire the Equipment to the Customer for use at the Delivery Address only subject to the terms and conditions of the Contract.
- 2.2 The Hirer shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Customer's quiet possession of the Equipment during the Hire Period.
- 2.3 Any samples, drawings, descriptive matter or advertising produced by the Hirer and any descriptions or illustrations contained in the Hirer's website, catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 This Agreement applies to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 A quotation for the hire of the Equipment given by the Hirer shall not constitute an offer. A quotation shall only be valid for a period of 30 Days from its date of issues provide this has not been previously withdrawn by the Hirer.
- 2.6 The Purchase Order constitutes an offer by the Customer to hire the Goods in accordance with this Agreement. The Customer is responsible for ensuring that the terms of the Purchase Order are complete and accurate.
- 2.7 The Purchase Order shall only be deemed to be accepted when the Hirer issues a written acceptance of the Order by way of the Confirmation Form, at which point the Contract shall come into existence and shall be subject to this Agreement.
- 2.8 The Minimum Hire Period shall commence on the Commencement Date.

## **3. The Equipment**

- 3.1 The Customer may select the Equipment from the Hirer's website.

- 3.2 Alternatively to clause 3.1, and if the Hirer agrees, the Hirer shall attend the Customer's premises on a date and time agreed between the parties, prior to the hire of any equipment to assess which Equipment, it in sole and absolute discretion the Hirer is required to hire. In which case:
- (a) the Hirer shall use its reasonable endeavours to select the appropriate equipment for the Customer's needs using reasonable care and attention; and
  - (b) upon acceptance of the Hirer's proposed equipment, the Customer warrants that it has taken its own steps to confirm that the Hirer's proposed equipment is suitable for its needs.
- 3.3 If the Customer selects the Equipment in accordance with 3.1 and during the Minimum Hire Period, it becomes evident to the Customer that the Equipment selected for hire is not suitable for the Customer's needs, then:
- (a) the Customer may select alternative equipment from the Hirer provided that the Customer shall be liable to make payment for:
    - (i) all costs, charges, expenses and fees incurred by the Hirer to replace the Equipment with alternative equipment including, without limitation, any delivery costs, de-installation of existing Equipment and installation of alternative equipment (the '**Additional Charges**'); and
    - (ii) the Rental Payment for the full Hire Period of the alternative equipment (payable in accordance with clause 5).
- 3.4 If the Hirer recommends the Equipment in accordance with clause 3.2 and during Minimum Hire Period it becomes evident to the Customer that the Equipment selected is not suitable for the Customer's needs, then the Customer may select alternative equipment from the Hirer. The Customer shall, in the events specified in this clause 3.4, be liable for the Rental Payment for the full Hire Period of the alternative equipment (payable in accordance with clause 5) save that the Hirer (and not the Customer) shall be responsible for the Additional Charges incurred by the Hirer to replace the Equipment with alternative equipment. However, the Customer shall be liable for the Additional Charges incurred by the Hirer to replace the Equipment with alternative equipment if in the sole and absolute discretion of the Hirer, the reason for unsuitability of the Equipment recommended by the Hirer is as a result of the information provided by the Customer prior to hire.

#### **4. Hire Period**

- 4.1 The Customer's hire of the Equipment shall commence on the Commencement Date and shall continue for the Minimum Hire Period. The Customer shall be entitled to terminate this Contract at the end of the Minimum Hire Period by providing no less than 5 Business Days' notice prior to the expiry of the Minimum Hire Period (the '**Off-Hire Notice**'). The Hirer shall be entitled to terminate this Contract by providing no less than 5 Business Days' notice at any point during the Hire Period.

- 4.2 Following the expiry of the Minimum Hire Period and provided the Customer has not issued the Off-Hire Notice, the Equipment shall remain on hire by the Customer (the '**Continued Hire Period**').
- 4.3 Together the Minimum Hire Period and the Continued Hire Period shall be the '**Hire Period**'.
- 4.4 Unless agreed otherwise, the Hirer shall continue to invoice the Customer every four weeks, in advance (in accordance with clause 5) commencing on the expiry of the Minimum Hire Period.
- 4.5 The Continued Hire Period shall continue unless and until terminated by the Customer on providing 5 days prior, written notice to the Hirer (the '**Continued Hire Termination Notice**'). On termination of the Hire Period and/or the Renewed Hire Period, clause 14 shall apply.
- 4.6 If the Customer issues the Continued Hire Termination Notice to terminate the Continued Hire Period prior to the expiry of the given month, the Rental Payment shall be calculated on a pro-rata basis as accrued up to the date of the expiry of the notice period set out in clause 4.5.
- 4.7 The Hirer shall, following receipt of the Off-Hire Notice and/or the Continued Hire Termination Notice (as the case may be), arrange for the Collection of the Equipment from the Delivery Address.
- 4.8 The Customer warrants that it shall facilitate the de-installation and Collection of the Equipment from the Delivery Address by the Hirer on the date of de-installation and Collection and shall allow access to the Delivery Address for this purpose and shall deliver up all of the Equipment. For the avoidance of any doubt, the date and time for de-installation and Collection of the Equipment shall be subject to clause 4.9 and an estimate only. The date and time for de-installation and/or Collection may be subject to change by the Hirer. Time for de-installation and Collection shall not be of the essence.
- 4.9 Unless the Hirer (in its sole and absolute discretion) has agreed that the Customer may de-install the Equipment prior to Collection, the Hirer shall de-install the Equipment on or prior to Collection. The Hirer makes no guarantee that the Equipment shall be Collected on the day of de-installation and Collection may be arranged after de-installation. Without prejudice to clause 4.8, the times and dates of Collection and de-installation shall be subject to the Hirer's availability and as communicated by the Hirer to the Customer.. The cost of de-installation shall not be included in the Rental Payment and shall be chargeable separately by the Hirer at the cost notified by the Hirer to the Customer from time to time.
- 4.10 The Customer shall not be entitled to make use of the Equipment following the expiry of the Off-Hire Notice and/or Continued Hire Notice and before the Equipment is Collected. However, the Customer shall not be charged for any period that the Equipment remains on the Customer's Site whilst Collection is being arranged by the Hirer.
- 4.11 The Customer warrants that it shall maintain in effect all insurance, pursuant to clause 9, until such time that the Equipment is actually Collected by the Hirer from the Customer's Site.

## **5. Rental Payments**

- 5.1 The price for the hire of the Equipment shall be as per the Rental Payments set out in the Confirmation Form.
- 5.2 The Customer shall pay the Rental Payments to the Hirer for the hire of the Equipment. Time for payment of the Rental Payments by the Customer is of the essence of the Contract.
- 5.3 The Rental Payment shall **not** include the following costs and charges which shall be charged separately by the Hirer (as agreed between the parties in advance) and which shall be payable by the Customer in accordance with the terms of the relevant invoice(s):
- (a) the cost of delivery and packaging of the Equipment (except where the parties have agreed for Customer Pick-Up of the Equipment from the Hirer's Site in which case the Customer shall remain fully responsible and liable for the cost of all delivery, carriage, packing and packaging (and any associated VAT or sales tax));
  - (b) Collection costs,
  - (c) installation costs;
  - (d) de-installation costs;
  - (e) Call Out Charges (as defined in clause 11.3(c);
  - (f) repair and/or replacement costs; and
  - (g) such other as notified to the Customer by the Hirer from time to time.
- 5.4 The Hirer shall issue the Customer with the first invoice on or prior to the Delivery Date. Thereafter, the Hirer's invoices shall be issued thereafter on a four weekly basis following the Delivery Date to the Customer (or such other period as agreed otherwise by the Hirer). All invoices issued to the Customer shall be payable by the Customer in accordance with the terms of each invoice issued to it.
- 5.5 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 5.6 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.7 If the Customer fails to make a payment due to the Hirer under this Agreement by the due date, then, without limiting the Hirer's remedies under clause 13, the Hirer may at its sole and absolute discretion:
- (a) terminate this Agreement under clause 13 and arrange for the Collection of the Equipment; and/or
  - (b) require the Customer to pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

- 5.8 If the Hirer opts, in its sole and absolute discretion to:
- (a) terminate this Agreement and Collect the Equipment pursuant to clause 5.7(a), the Hirer shall notify the Customer as soon as reasonably practicable of the date and time on which the Hirer shall arrange for the collection of the Equipment (the '**Early Collection Date**'). The Customer warrants that it shall facilitate the Collection of the Equipment from the Delivery Address by the Hirer on the Early Collection Date and shall deliver up all Equipment. The Customer shall remain fully liable for maintaining insurance for the Equipment, pursuant to clause 9, up to and including the Early Collection Date; and/or
  - (b) charge interest on the overdue sum pursuant to clause 5.7(b), interest will accrue from the day the invoice was due each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%, until such time as the Hirer's invoice is satisfied in full.

## **6. Delivery or Pick-Up of Equipment**

### *Delivery of Equipment*

- 6.1 Except where the parties have agreed for the Customer to Pick-Up the Equipment in accordance with clause 6.4 below, Delivery of the Equipment shall be made by the Hirer. The Hirer shall use all reasonable endeavours to effect Delivery by the Delivery Date. For the avoidance of any doubt, time for Delivery by the Hirer shall not be of the essence.
- 6.2 If the Customer fails to accept delivery of the Equipment on the Delivery Date, then, except where such failure is caused by the Hirer's failure to comply with its obligations under this Agreement:
- (a) the Equipment shall be deemed to have been delivered on the Delivery Date and the Hire Period shall commence from this date; and
  - (b) the Hirer shall store the Equipment until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

### *Customer Pick-Up of Equipment*

- 6.3 The Hirer may, at its discretion, allow a duly authorised representative of the Customer to Pick-Up the Equipment from the Hirer's Site at the Customer's own expense. The Customer shall be fully responsible and liable for the transportation, carriage and any insurance for the delivery of the Equipment from the Hirer's Site.
- 6.4 The Customer warrants that following Pick-Up it shall immediately transport, at its own cost, the Equipment to the Delivery Address and no other location.
- 6.5 If the Customer fails to Pick-Up the Equipment at the date and time agreed, then:
- (a) the Equipment shall be deemed to have been Collected on the date agreed for Pick-Up and the Hire Period shall commence from this date, unless agreed otherwise; and

- (b) the Hirer shall store the Equipment until Pick-Up takes place and charge the Customer for all related costs and expenses (including insurance).
- 6.6 Prior to Delivery or Pick-Up of the Equipment (as the case may be), the Hirer may carry out an inspection and inventory of the Equipment. If the Customer notices any defects on Pick-Up and/or Delivery of the Equipment, it must notify the Hirer immediately. Acceptance of the existence of any defects notified to it by the Customer shall be at the sole and absolute determination of the Hirer.
- 6.7 Notwithstanding any defects noted and agreed in clause 6.6, the Delivery and/or Pick-Up of the Equipment (as the case may be) shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Hirer, the Customer and/or the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 6.8 Risk following Delivery and/or Pick-Up shall transfer in accordance with **clause 9** of this Agreement.

## **7. Installation of the Equipment**

- 7.1 The Hirer shall install the Equipment at the Delivery Address (except in the event of Dry Hire of the Equipment (pursuant to clause 8)). The cost of installation shall not be included in the Rental Payment and shall be chargeable separately by the Hirer at the cost notified by the Hirer to the Customer from time to time.
- 7.2 Any date and/or time provided by the Hirer for the installation of the Equipment (the 'Installation Date') shall be an estimate only and time shall not be of the essence. The Hirer shall not be liable whatsoever to the Customer or any third party for any failure to delay to install the Equipment on the estimated Installation Date. For the avoidance of any doubt, the Hirer does not warrant and cannot guarantee that the Installation Date shall be on the same date as the Delivery Date and/or the Pick-Up date and is subject to the Hirer's availability.
- 7.3 Upon installation by the Hirer, the Hirer may provide the Customer with a handover including, without limitation, in respect of the use, handling and daily maintenance of the Equipment. The Customer warrants that it will comply with all handover instructions during the Hire Period.
- 7.4 The Customer shall procure that a duly authorised representative of the Customer shall be present at the installation of the Equipment. If the Customer notices any defects following installation of the Equipment, it must notify the Hirer immediately. Acceptance of any defects shall be at the sole and absolute determination of the Hirer.
- 7.5 Notwithstanding any defects noted and agreed in clause 7.4, the Customer's acceptance by such representative of installation shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every



way for the purpose for which it is intended. If required by the Hirer, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

## **8. Dry Hire**

8.1 The Hirer may, in its sole and absolute discretion, agree to the Dry Hire of the Equipment. In the event of Dry Hire, the Customer:

- (a) shall remain fully liable, at its own cost, to install the Equipment;
- (b) shall remain fully liable for the safe handling, installation, and commissioning of the Equipment;
- (c) shall engage fully trained, skilled, and proficient professional operator to install and commission the Equipment (and shall provide such evidence as requested by the Hirer immediately on request that the operator is a fully trained, skilled and proficient professional);
- (d) shall provide any reports, records or certificates required to demonstrate that the Equipment has been properly and safely installed and commissioned;
- (e) warrants and undertakes that it shall immediately notify the Hirer of any damage or destruction to the Equipment during the installation process and shall reimburse the Hirer for all costs, charges, expenses, fees, and other sums incurred by the Hirer in respect of a) the damage to or replacement of any damaged Equipment and b) any time the Equipment cannot be used and/or hired as a result of such damage or destruction by the Customer; and
- (f) comply with clause 10.2.

8.2 The Hirer reserves its rights entirely to refuse to allow the Dry Hire of any Equipment without providing any further reasoning or explanation to the Customer.

## **9. Title, risk and insurance**

9.1 The Equipment shall at all times remain the property of the Hirer, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment during the Hire Period subject to the terms and conditions of this Agreement).

9.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery or Pick-Up as the case may be. The Equipment shall remain at the sole risk of the Customer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Customer (the '**Risk Period**') until such time as the Equipment is Collected by the Hirer. During the Hire Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Hirer may from time to time nominate in writing;

- (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Hirer may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
  - (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Hirer may from time to time consider reasonably necessary and advise to the Customer.
- 9.3 All insurance policies procured by the Customer shall be endorsed to provide the Hirer with at least twenty 20 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on the Hirer's request name the Hirer on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 9.4 If the Customer fails to effect or maintain any of the insurances required under this Agreement, the Hirer shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 9.5 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Hirer and proof of premium payment to the Hirer to confirm the insurance arrangements.

## **10. Customer's responsibilities**

- 10.1 The Customer shall during the term of this Agreement and throughout the Hire Period:
  - (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
  - (b) take such steps (including compliance with all safety and usage instructions provided by the Hirer) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
  - (c) ensure (at the Customer's own expense) the daily maintenance of the Equipment strictly in accordance with the Hirer's instructions to keep the Equipment in good and substantial repair and in as good an operating condition as it was on the Delivery Date or date of Pick-Up (fair wear and tear only excepted);
  - (d) comply with all handover instructions provided by the Hirer on installation of the Equipment;
  - (e) make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of the Hirer. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Hirer immediately on installation;
  - (f) keep the Hirer fully informed of all material matters relating to the Equipment;

- (g) keep the Equipment at all times at the Delivery Address and shall not move or attempt to move any part of the Equipment to any other location without the Hirer's prior written consent;
- (h) permit the Hirer or its duly authorised representative to inspect and carry out any maintenance and/or repair work on the Equipment at all reasonable times and for such purpose to enter on the Delivery Address or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection and maintenance and/or repair;
- (i) not, without the prior written consent of the Hirer, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (j) not without the prior written consent of the Hirer, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Hirer against all losses, costs or expenses incurred as a result of such affixation or removal;
- (k) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Hirer in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Hirer may enter such land or building and recover the Equipment both during the term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Hirer of any rights such person may have or acquire in the Equipment and a right for the Hirer to enter onto such land or building to remove the Equipment;
- (l) continue to make payment of all Rental Payments during any period that the Equipment remains on hire as a result of the Customer's failure to allow the Hirer or the Hirer's Personnel to Collect the Equipment;
- (m) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Hirer and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Hirer on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (n) not use the Equipment for any unlawful purpose;
- (o) ensure that at all times the Equipment remains identifiable as being the Hirer's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;

- (p) allow the Hirer or its representatives access to the Delivery Address or any premises where the Equipment is located for the purpose of removing the Equipment;
- (q) provide all requisite materials, facilities, access and suitable working conditions, at its own expense, to facilitate and enable Delivery and installation to be carried out safely and expeditiously including the materials, facilities, access and any working conditions notified to it by the Hirer from time to time;
- (r) not do or permit to be done anything which could invalidate the insurances referred to in clause 9; and
- (s) comply with any and all additional terms, exclusions and responsibilities as set out in the Customer's quotation and Confirmation Form.

10.2 The Customer acknowledges that the Hirer shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractor, and the Customer shall indemnify the Hirer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the Hirer arising out of, or in connection with any failure by the Customer to comply with the terms of this Agreement.

## **11. Defects**

11.1 The Customer shall give immediate written notice to the Hirer in the event of any loss, accident or damage to the Equipment.

11.2 Upon notification of the loss, accident or damage to the Equipment in accordance with clause 11.1, the Hirer shall carry out diagnostic testing (by way of a phone call or by way of physical inspection) (the '**Diagnosis Testing**'). The Customer shall allow access to the Delivery Address for any physical inspection required by the Hirer.

11.3 If, following the Diagnosis Testing the Hirer determines in its sole and absolute discretion that the fault, defect or lack of functionality has arisen out of or in connection with the Customer's action, inaction, misuse, neglect, alteration, mishandling, incorrect installation or unauthorised manipulation by any person other than the Hirer's authorised personnel (fair wear and tear accepted) then:

- (a) the Hirer shall inform the Customer;
- (b) the Customer shall be liable to pay on demand to the Hirer for all costs, charges, expenses and fees incurred by the Hirer for a) repairing the Equipment and/or replacing the Equipment with alternative equipment; and b) any time the Equipment cannot be used and/or hired as a result of the Customer's fault; and
- (c) the Customer shall be liable to pay a fee for any attendance by the Hirer to the Delivery Address to carry out the Diagnosis Testing on the Equipment (the '**Call Out Charge**'). The Hirer shall notify the Customer of the value of the Call Out Charge upon

attendance at the Delivery Address. The Hirer's rights remain reserved entirely to increase the Call Out Charge from time to time.

- 11.4 If following the Diagnosis Testing, the Hirer determines that the fault, defect or lack of functionality has not arisen as a result of a Customer Fault then the Hirer shall carry out the necessary remedial works at its own cost.
- 11.5 Unless advised otherwise by the Hirer, the Customer warrants that upon notification to the Hirer, it shall power down the Equipment from the mains.
- 11.6 The Hirer may, its sole and absolute discretion, allow the Customer to carry out the remedial works. The Customer warrants that it shall not carry out or cause or allow any third party to carry out any repair works on the Equipment without the express, prior consent of the Hirer. If the Hirer consents to the Customer carrying out remedial works on the Equipment, the Customer shall engage a competent, qualified and skilled contractor to carry out the remedial works. The party liable for making payment of any remedial is to be as determined by the Hirer in accordance with clause 11.5.
- 11.7 Irrespective of whether the initial loss, accident or damage was caused by the Customer or not, the Customer shall remain entirely liable for the actions and/or omissions of any contractor engaged under clause 11.6 and shall indemnify the Hirer in full including, without limitation, against any loss, damage, fault, defect or loss of functionality of the Equipment as a result of the Customer or the contractor's actions or omissions.
- 11.8 The Hirer shall have no liability to the Hirer or any third party whatsoever for any period during which the Equipment is not functioning and/or during any period that the Hirer (or the Customer) is arranging for or carrying out the repair or replacement of the Equipment.

## **12. Limitation of liability**

- 12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Nothing in this Agreement limits any liability which cannot legally be limited including liability for:
  - (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 7 of the Supply of Goods and Services Act; and
  - (d) any matter in respect of which it would be unlawful for the parties to exclude or restrict liability.
- 12.3 Subject to clause 12.2, the Hirer's total liability to the Customer shall not exceed the value of the Rental Payments actually paid to the Hirer under this Agreement.

12.4 Subject to clause 12.2, the Hirer shall not be liable under this Agreement for any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

12.5 Subject to clause 12.2, all implied terms and conditions as to the quality or performance of the Equipment and any other goods or services provided under this Agreement are, to the fullest extent permitted by law, excluded from this Agreement.

### **13. Termination**

13.1 Without affecting any other right or remedy available to it, the Hirer may terminate this Agreement with immediate effect by giving notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment;
- (b) the Customer commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so;
- (c) the Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (d) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (f) the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company, limited liability

partnership or partnership) [other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer];

- (h) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer (being a company);
- (i) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
- (k) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(d) to clause 13.1(k) (inclusive);.
- (m) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
- (n) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.2 For the purposes of clause 13.1(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Hirer would otherwise derive from:

- (a) a substantial portion of this Agreement; or
- (b) any of the obligations set out in clause 10,

over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

13.3 This Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

#### **14. Consequences of termination**

14.1 On termination of this Agreement, however caused:

- (a) the Hirer's consent to the Customer's possession of the Equipment shall terminate;
- (b) the Hirer may, by its authorised representatives, without notice or at such time as notified by the Hirer to the Customer and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Delivery Address or

any premises at which the Equipment is located. Time for Collection of the Equipment by the Hirer shall not be of the essence; and

- (c) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Hirer on demand:
  - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.8(b); and
  - (ii) any costs and expenses incurred by the Hirer in recovering the Equipment or in collecting any sums due under this Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

14.2 On termination of this Agreement pursuant to clause 13.1 and/or any other repudiation of this Agreement by the Customer which is accepted by the Hirer or pursuant to clause 13.3, without prejudice to any other rights or remedies of the Hirer, the Customer shall pay to the Hirer on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Hire Period.

14.3 The sums payable pursuant to clause 14.2 shall be agreed compensation for the Hirer's loss and shall be payable in addition to the sums payable pursuant to clause 14.1(c). Such sums may be partly or wholly recovered from any Deposit.

14.4 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

14.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## **15. Force majeure**

The Hirer shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control including, without limitation, any local authority, Government, agency or other bodies response to any pandemic or epidemic (including Covid-19) and/or any law, practice, provision, guidance or recommendation of any such body as result of the pandemic or epidemic. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

## **16. Confidential information**

16.1 Each party undertakes that it shall not at any time during or following the expiry of this Agreement disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2.



- 16.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with clause 16; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 16.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

**17. Assignment and other dealings**

This Agreement is personal to the Customer who shall not assign, transfer, mortgage, charge, subcontract, declare a trust or deal in any other manner with any of its rights and obligations under this Agreement. For the avoidance of any doubt, the Hirer shall be entitled to assign, transfer, mortgage, charge, subcontract, declare a trust or deal in any other manner with any of its rights and obligations under this Agreement at any time, without requiring the consent or approval of the Customer.

**18. Entire agreement**

- 18.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

**19. Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**20. No partnership or agency**

- 20.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**21. Further assurance**

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

**22. Counterparts**

22.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**23. Third party rights**

Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

**24. Notices**

24.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address notified by one party to the other party from time to time.

24.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, where business hours resume. In this clause 24.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**25. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or

restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**26. Rights and remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**27. Severance**

27.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

27.2 If any provision or part-provision of this Agreement is deemed deleted under clause 27.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**28. Governing law**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**29. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.