



TERMS AND CONDITIONS OF HIRE

These terms and conditions ("Terms and Conditions") apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Client. These terms and conditions apply to all Equipment hired by the Client from the Supplier.

1. DEFINITIONS AND INTERPRETATION

In the Agreement:

- 1.1 the following terms shall have the following meanings unless the context otherwise requires:

"Agreement"	these Terms and Conditions, and the terms of the relevant Quote which is accepted by the Client, together with any attachments or annexes to the Terms and Conditions or Quote;
"Business Day"	any day other than (i) a Saturday; (ii) a Sunday; (iii) a day which is a bank holiday in England (as set out on www.gov.uk/bank-holidays for bank holidays in England);
"Cancellation Fee"	the cancellation fee that may be payable by the Client pursuant to Clause 12.4;
the "Client"	the client of the Supplier whose details are set out in the Quote;
"Commencement Date"	the date stipulated in the Quote as the start date for the beginning of the hire (or if none is stipulated there it shall be the date of delivery of the Equipment to the Client or collection of the Equipment by the Client);
"Confidential Information"	any information in any form or medium obtained by one Party from or on behalf of the other pursuant to the Agreement which is expressly marked as confidential or which a reasonable person would reasonably consider to be confidential, whether disclosed or obtained before, on or after the date of the Agreement together with any reproductions of such information or any part of this information;
"Delivery Charges"	the delivery, loading, unloading, freight and collection charges (if any) stated in the Quote or as otherwise calculated in accordance with the Supplier's customary charging practices from time to time;
"Despatch Note"	the despatch (or dispatch) note, together with any attachments to it, to be provided by the Supplier to the
the "Supplier"	Emmyland Ltd., a company registered in England under number 9747866 whose registered office is at Suite E2, 2nd Floor, The Octagon, Middleborough, Colchester, Essex, England, CO1 1TG;

- 1.2 references to hire include rental;
- 1.3 references to "Clauses" are to clauses of these Terms and Conditions;
- 1.4 the headings are inserted for convenience only and shall not affect the interpretation or construction of the Agreement;
- 1.5 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership or limited liability partnership;
- 1.6 references to "includes" or "including" or like words or expressions shall mean without limitation;
- 1.7 references to "written" or in "writing" includes in electronic form; and
- 1.8 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2. AGREEMENT

- 2.1 Save as expressly provided herein, the Agreement (together with any documents referred to in it) shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties hereto preceding the date of the Agreement and in any way relating to the subject matter of the Agreement and to the exclusion of any representations, statements, promises or warranties not expressly stated herein save for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each Party acknowledges that it has not entered into the Agreement based on any representation, statement, promise or warranty that is not expressly incorporated into the Agreement.
- 2.2 The Agreement (together with any documents referred to in it) constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.
- 2.3 Subject to Clause 2.1, except in respect of the Specification, all materials and other particulars furnished by the Supplier prior to provision of the Quote or in the Supplier's sales or marketing materials or other documents (including its catalogues, trade literature, brochures, quotations, price lists or website) or made orally by the Supplier or the Representatives are given for general information purposes only and the Client acknowledges that it is not entering into the Agreement in reliance upon any such materials or other particulars. The Client also acknowledges that the Equipment may look different to their representation in any such materials or particulars.
- 2.4 In the event of any conflict between the provisions of these Terms and Conditions and the Quote, then the provisions of the Quote shall prevail over the provisions in these Terms and Conditions.
- 2.5 If the Client provides the Supplier with an order, purchase order, confirmation of order, specification or other document for the Equipment or Maintenance Services, such document shall be purely for the Client's administrative purposes or to confirm acceptance of the Quote and shall not form part of the Agreement.

Client and to be completed or confirmed by the Client on the Client's receipt of the Equipment;

"Equipment"	any of the Supplier's (or its supplier's) equipment provided or to be provided by the Supplier to the Client pursuant to the Agreement, as more particularly described in the Quote and any replacement or additional equipment provided or to be provided by the Supplier in accordance with the Agreement;
"Event of Force Majeure"	has the meaning given to it in Clause 13.1;
"Hire Fees"	the hire fees payable by the Client to the Supplier for the hire of the Equipment, as may be set out in the Quote or as agreed in writing by the Parties from time to time, or as otherwise calculated in accordance with the Agreement;
"Hire Period"	the period of hire of the Equipment starting on the Commencement Date and lasting for the period described in the Quote or otherwise extended by the Parties' agreement in writing, or such longer period during which the Equipment is in the Client's possession or control or otherwise away from the Supplier's possession;
"Instructions"	any instructions, guidance, advice, recommendations and user manuals for the Equipment issued by the Manufacturer or the Supplier from time to time;
"Liability"	has the meaning given to it in Clause 10.6;
"Location"	the location for delivery and use of the Equipment, and the provision of any Maintenance Service, as may be set out in the Quote or otherwise agreed in writing between the Parties;
"Maintenance Services"	the services of the adjustment, repair or replacement of the Equipment provided by or on behalf of the Supplier in accordance with the Agreement, so that the Equipment meets the standard in Clause 8.1;
"Manufacturer"	the manufacturer of particular Equipment;
"Party"	either the Supplier or the Client (together the "Parties"), as identified in the Quote;
"Quote"	the written quote or quotation from the Supplier to the Client containing the specific information relating to the Equipment that the Supplier is willing in principle to supply the Client for a particular order;
"Representative"	any employee, officer, representative, agent or subcontractor of the Supplier who assists the Supplier with provision of the Equipment or Maintenance Services;
"Specification"	the specification for the particular Equipment published by the Manufacturer from time to time;

- 2.6 The Agreement shall be legally formed and the Parties shall be legally bound upon the Client's acceptance of the Quote in accordance with the terms of that Quote, and taking place upon the earliest of:

- 2.6.1 the Supplier's receipt of the Client's order or written confirmation of acceptance of the Quote and on the same terms and within the same parameters as the Quote, unless the Parties expressly agree otherwise in writing;
- 2.6.2 the Supplier's checking out of the Equipment upon the Client's confirmation (orally or in writing); or
- 2.6.3 the Supplier's handover of the Equipment to the Client.

- 2.7 It is the Client's responsibility to ensure that the Quote is complete and accurate and to point out to the Supplier in writing anything which is incomplete or inaccurate in the Client's details or which the Client wishes to obtain under the Agreement.

- 2.8 Each Quote constitutes a separate agreement. There may be more than one agreement between the Parties in force at the same time as the Agreement.

- 2.9 Except as expressly provided otherwise in the Agreement, no change to the Agreement shall be binding unless it is agreed in writing by both Parties and expressed to be for the purpose of such change. If the Parties wish to:

- 2.9.1 extend the Hire Period for any existing Equipment that is covered in the Quote, this is subject to both Parties' written agreement in their absolute discretion including for any additional Hire Fees that the Supplier may charge for the particular Equipment being out of the Supplier's possession for longer than previously anticipated, or the Supplier swapping out Equipment for other Equipment and charging the Client any additional Delivery Charges for doing so; and
- 2.9.2 add any new Equipment that is not covered in the Quote, this is subject to the Parties agreeing in writing (such agreement not to be unreasonably withheld or delayed), including as to any new Hire Fees and, where applicable, any Delivery Charges that may apply in respect of such new Equipment.

3. CLIENT'S OBLIGATIONS

- 3.1 The Client shall, during the Hire Period:

- 3.1.1 use the Equipment in accordance with all applicable laws, rules, regulations, bye-laws and codes of practice;
- 3.1.2 ensure that it has all necessary licences and permissions to use the Equipment;
- 3.1.3 promptly comply with the reasonable requests of the Supplier from time to time in connection with the Agreement including use or inspection of the Equipment;
- 3.1.4 take all reasonable care of the Equipment, keep the Equipment in good condition, and use the Equipment in a skilful and proper manner;
- 3.1.5 at the Client's cost, employ and utilise fully and suitably trained and licensed technicians (including to any standard reasonably required by the Supplier or Manufacturer) to operate the Equipment during the Hire Period who are capable of operating the Equipment in a safe and proper manner and in accordance with the terms of the Agreement. The Client shall provide the Supplier with evidence of the technicians' suitability

- upon the Supplier's request. If the Quote includes any Equipment of a high technology specification (as set out in more detail in the Quote), the Supplier reserves the right, at its discretion, to require the Client to ensure that such Equipment is solely operated by fully and suitably trained and licensed technicians;
- 3.1.6 if specified to do so in the Quote or the Instructions, undertake routine and periodic checks of the Equipment and maintain a formal written record of such checks and make this record available to the Supplier;
- 3.1.7 take all precautions necessary to ensure the Equipment's safety and security and ensure that the Equipment are kept protected in all respects. This includes the Client ensuring that:
- (a) all precautions are taken to avoid any damage or destruction to the Equipment;
- (b) the Equipment is protected against damage from other goods or materials or the elements, including being weatherproofed and protected from salt, water, sand, spray and oil; and
- (c) a detailed risk assessment is taken for the Location before the Commencement Date;
- 3.1.8 unless otherwise set out in the Quote or agreed by the Parties in writing, promptly arrange the return to or collection by the Supplier of the Equipment (at the Client's cost) on the expiry of the intended Hire Period described in the Quote or otherwise extended by the Parties' agreement in writing, or on the termination of the Agreement (whichever is earlier);
- 3.1.9 pay the Hire Fees for the entire Hire Period and any Delivery Charges and at the times required by the Agreement;
- 3.1.10 in the event that the Equipment is used outside the United Kingdom or transported by air:
- (a) ensure that it is to a place where the Equipment is not interfered with or damaged;
- (b) for air travel, ensure that the Equipment is transported only on a regular scheduled flight by any airline recognised by IATA (unless otherwise agreed by the Supplier in writing); and
- (c) be solely responsible for obtaining and paying for all customs clearances, licences and permits as shall be necessary to take the Equipment out of and back to the United Kingdom;
- 3.1.11 provide a safe, comfortable and suitable environment for when the Representatives deliver or collect the Equipment and undertake any Maintenance Services at the Location, and the Client shall inform the Supplier with sufficient detail in good time prior to the arrival at the Location if anything may affect the provision of such environment;
- 3.1.12 promptly comply with the reasonable requests of the Supplier from time to time in connection with the Agreement; and
- 3.1.13 comply with all Instructions for storage, maintenance or use of the Equipment as the Supplier or the Representatives make known to the Client from time to time. Any storage, maintenance or use of the Equipment other than in accordance with the Instructions or the Supplier's or its Representatives' or the Manufacturer's written advice, recommendation and instructions shall be entirely at the Client's risk.
- 3.2 The Client shall not, and shall procure that any third party does not while the Equipment is at its risk or under its control:
- 3.2.1 relocate or remove the Equipment from the Location without the prior written consent of the Supplier;
- 3.2.2 misuse or improperly use the Equipment or use it in a manner for which it is not intended;
- 3.2.3 alter or modify the Equipment in any way (or attempt to do so) without the prior written consent of the Supplier;
- 3.2.4 use the Equipment on any abnormal or hazardous assignment or in combination with any equipment or materials not approved in writing by the Supplier;
- 3.2.5 open the outer case (if any) of the Equipment or of any item or part thereof nor interfere in any way with the Equipment of the mechanism thereof or any nameplates or signs or serial numbers thereon;
- 3.2.6 repair or attempt to repair or request a third party to repair or attempt to repair the Equipment; or
- 3.2.7 use the Equipment in any way which would violate the Instructions.
- 3.3 The Client acknowledges and accepts that:
- 3.3.1 it uses the Equipment at its own risk and that it shall be responsible for such use of the Equipment; and
- 3.3.2 its non-compliance with Clauses 3.1 or 3.2 may cause loss and damage which the Client shall be responsible for paying any attributable costs in full.
- 3.4 At all reasonable times and upon reasonable advance warning, the Client shall permit the Supplier and the Representatives to inspect and have access to any place at which the Equipment is being used or kept to ensure that the Client is complying with its obligations under the Agreement, to provide the Maintenance Services and to exercise its rights under the Agreement.
- 3.5 If the Supplier discovers or reasonably suspects that:
- 3.5.1 the Client is not complying with the terms of the Agreement;
- 3.5.2 the Equipment has been or will be damaged or rendered inoperable for whatever reason; or
- 3.5.3 the Client's use of the Equipment may be dangerous, hazardous or contrary to health and safety regulations;
- the Supplier and its Representatives shall have a right to enter any place at which the Equipment is being used or kept and remove the Equipment immediately and charge the Client its reasonable costs for its removal.
- 3.6 If any Equipment is lost, stolen, damaged or destroyed from the time that it is initially delivered to or collected by the Client until the time that it is successfully received back to the Supplier:
- 3.6.1 the Supplier shall have a right to charge the Client for the repair or replacement of the same on a "market value" basis; and
- 3.6.2 the Supplier may continue to charge the Client for Hire Fees (but without any discount that may otherwise have applied) until such time as the Equipment is in the Supplier's possession in good usable condition or until such time as any relevant insurance claim is settled or paid to the Supplier in full.
- 4. SUPPLIER'S OBLIGATIONS**

- 4.1 The Supplier shall, as set out in the Quote:
- 4.1.1 make the Equipment available for collection by the Client; or
- 4.1.2 deliver the Equipment to the Client at the Location;
- and provide any Maintenance Services, in accordance with the Agreement.
- 4.2 The Supplier shall use its reasonable endeavours to perform its obligations within any timescales set out in the Agreement, but time for performance shall not be of the essence and the Supplier shall not have any Liability for any delays or failure to accurately perform its obligations:
- 4.2.1 if it has used those endeavours; or
- 4.2.2 if caused by any failure or delay on the part of the Client or the Client's agents, staff, officers, employees, representatives, contractors or Clients or by any breach by the Client of the Agreement.
- 4.3 If and to the extent that the Supplier is delayed or hindered in providing the Equipment or Maintenance Services as a result of:
- 4.3.1 any breach, delay or failure by the Client to perform any of its obligations; or
- 4.3.2 the Client requesting that the Supplier suspends performance of its obligations or provision of Equipment or Maintenance Services under the Agreement;
- then:
- (a) the Supplier shall not have any responsibility or Liability to the Client; and
- (b) the Client shall indemnify, and keep indemnified, the Supplier against any and all losses, liabilities, claims, proceedings, judgments, damages, demands, actions, costs, charges (including the Supplier's additional charges for an aborted or repeat Location visit), expenses, penalties and fines suffered by or incurred by the Supplier or the Representatives;
- resulting from any such breach, delay, failure or request.

5. RECEIPT OF THE EQUIPMENT

- 5.1 The Client shall ensure that it is ready for safe receipt of the Equipment on the Commencement Date as set out in the Quote or as otherwise agreed between the Parties.
- 5.2 Upon delivery by the Supplier or collection by the Client of the Equipment, the Client shall examine and check the Equipment to ensure that it is visibly in good condition and working satisfactorily before the Client accepts it or begins to use it. The Client shall check and sign a Despatch Note and other documentation attached to it upon receipt or collection of the Equipment. The signature of any person purporting to be an authorised representative of the Client on the Despatch Note or other documentation attached to it shall be sufficient evidence that:
- 5.2.1 the Client has received the Equipment in accordance with the Agreement;
- 5.2.2 the Client has examined and checked the Equipment and confirms that it is visibly in good condition and working satisfactorily (except for anything expressly stated on the Despatch Note or other documentation attached to it); and
- 5.2.3 the Client has been made aware of any information and Instructions (including as to safe use of the Equipment) provided by the Supplier or the Manufacturer.
- 5.3 If delivery or collection is delayed through the Client's unreasonable refusal to accept the Equipment, then the Supplier may (without affecting any other right or remedy available to the Supplier) deem the Commencement Date to be the date stated on the Quote and charge the Client for the Hire Fees for the Hire Period (without any deductions) as if the Hire Period had proceeded as envisaged notwithstanding the delayed receipt of the Equipment.

6. RISK IN THE EQUIPMENT

- 6.1 Subject to Clause 6.2, risk in the Equipment (including for fire, theft, loss or damage) shall pass to the Client on their delivery to or collection by the Client, and the Client shall have responsibility for the Equipment from that time. Risk in the Equipment shall revert back to the Supplier at the time when the Supplier receives it back in good usable condition. From the time when risk passes to the Client, the Supplier will not have any Liability for loss, damage or destruction of the Equipment (other than as set out in Clause 8).
- 6.2 Where delivery or collection is delayed due to the Client's breach of the Client's obligations, risk shall pass to the Client at the date when delivery or collection would have occurred but for the Client's breach.

7. OWNERSHIP AND INSURANCE FOR EQUIPMENT

- 7.1 As between the Parties, the Supplier (or the Supplier's supplier) retains ownership in the Equipment and so the Client shall not sell, assign, charge, mortgage, create a lien over, lease, hire or otherwise dispose of or give any third party rights in the Equipment. If a third party attempts to exercise any rights over or in respect of the Equipment, the Client shall inform the Supplier immediately. The rights granted to the Client under the Agreement are personal to the Client and are non-transferable and non-sublicensable and the Client shall only use the Equipment for its own use.
- 7.2 The Client shall ensure that the Equipment is insured from the time of delivery by the Supplier or collection by the Client until the expiry of the Hire Period (including while the Equipment is being returned to the Supplier) with a reputable and established insurer to the full replacement value and for incidental costs on a "new for old" basis of the Equipment for the places where the Equipment shall be and the uses for which the Equipment are used. The Client shall ensure that the Supplier's interest is noted on its insurance policy. The Client shall upon the Supplier's request provide a copy of such insurance policy to the Supplier from time to time.
- 7.3 In the event of any loss, theft or damage to the Equipment, the Client shall inform the Supplier in writing as soon as possible and no later than within 24 hours of such event. In the case of theft, the Client shall inform the police as soon as is reasonably practicable. In the case of any loss, theft or damage to the Equipment, the Client shall hold the proceeds of insurance for such loss, theft or damage for and to the Supplier's order.

8. WARRANTY FOR EQUIPMENT

- 8.1 Subject to the Client complying with Clause 3, the Supplier warrants that:
- 8.1.1 it shall use its reasonable endeavours to ensure that the Equipment is in good working order and condition at the time of or delivery to the Client, materially in accordance with the Specification;
- 8.1.2 it shall use reasonable skill and care in providing the Maintenance Services;
- 8.1.3 the Maintenance Services will be provided in a professional, competent and workmanlike manner;

- 8.1.4 while at the Location, it and its Representatives shall conform to the normal codes of staff and security practice as are advised to them in good time by the Client; and
- 8.1.5 it has all necessary rights, permissions and consents to enter into the Agreement.
- 8.2 The Supplier is not responsible for any services or equipment not expressly stipulated in the Agreement that the Supplier will provide.
- 8.3 Except for any matter upon which the Supplier specifically agrees in writing with the Client to advise, the Supplier shall not have any responsibility or Liability for advising on, or failing to advise on, anything else (including on any laws, rules, regulations, bye-laws or codes of practice).
- 8.4 It is the Client's responsibility to ensure that the Equipment meets its requirements and purposes. The Supplier does not warrant that the Equipment will perform to any performance levels or meet any particular specific requirements of the Client.
- 8.5 The Supplier shall not have any responsibility or Liability for failure to provide accurate Equipment or Maintenance Services to the extent caused by the Supplier's compliance with and reliance on the Client's instructions or requirements.
- 8.6 The warranties contained in Clause 8.1 are specifically limited to the Client. No warranty is made by the Supplier to any other person.
- 8.7 If the Client finds the Equipment to be defective or deficient according to the standard in Clause 8.1, or if the Supplier fails to provide the Maintenance Services, the Client shall inform the Supplier in writing immediately and give to the Supplier full details of the defect or deficiency, but the Client shall meanwhile continue to pay the Hire Fees (provided that the Supplier repairs or replaces the Equipment, or performs the Maintenance Services, within a reasonable time).
- 8.8 Subject to Clauses 8.9 and 8.11, the Supplier shall at its option (and as the Client's exclusive remedy):
- 8.8.1 repair or replace; or
- 8.8.2 provide an appropriate refund of the Hire Fees for; the Equipment which is not in conformance with the warranty set out in Clause 8.1, within a reasonable time.
- 8.9 Where the Client has informed the Supplier of any defects or deficiency in the Equipment and given full details thereof, the Supplier shall use its reasonable endeavours (as soon as reasonably possible) to repair or replace the Equipment or remedy the defect or deficiency without additional charge. Subject to Clause 10 and to the extent permitted by law, provided that it has used such reasonable endeavours, the Supplier shall not have any Liability for any loss or damage of whatever kind howsoever caused arising out of or in connection with the Client's use of, or the Client's inability to use, the Equipment in such circumstances.
- 8.10 Subject to Clause 8.11, the Supplier shall attend the Location at the times in consultation with the Client to perform the Maintenance Services. The Client shall ensure that it is ready and available for receipt of the Maintenance Services on the dates and times agreed between the Parties. If the Supplier has to wait while at the Location, the Supplier may charge, and the Client shall pay upon demand, additional fees at the Supplier's usual rates in respect of those waiting services.
- 8.11 In respect of any Equipment taken out of the United Kingdom, the Supplier's Liability shall only extend to delivery of any replacement at an address in the United Kingdom.
- 8.12 Where the Supplier attends the Location in order to perform the Maintenance Services, it shall do so during normal business hours of 08:00hrs to 17:00hrs on a Business Day (or such other time as the Supplier agrees in writing). If any Maintenance Services are requested by the Client and performed by the Supplier outside of normal business hours, the Supplier may charge, and the Client shall pay upon demand, additional fees at the Supplier's usual rates in respect of those services.
- 8.13 The Supplier may charge the Client at the Supplier's usual rates and for the Supplier's costs to repair or replace the Equipment where:
- 8.13.1 the condition of the Equipment has resulted from improper use, accident, neglect or any other causes external to the Equipment during the Hire Period;
- 8.13.2 the condition of the Equipment has resulted from improper or inadequate care, carelessness, or abnormal usage conditions during the Hire Period contrary to the Instructions or other requirements on the Client under the Agreement;
- 8.13.3 the Client or anyone other than the Supplier or the Representatives during the Hire Period makes or causes to be made any modifications to the Equipment (or attempts to do so) without the Supplier's written consent;
- 8.13.4 the Client or anyone other than the Supplier or the Representatives during the Hire Period operates the Equipment or causes them to be so operated contrary to the Instructions;
- 8.13.5 the Equipment is used in combination with any equipment or materials not approved by the Supplier;
- 8.13.6 the Client has not taken appropriate protective measures to safeguard the Equipment in accordance with the Agreement;
- 8.13.7 the Client repairs or attempts to repair or requests a third party to repair or attempt to repair the Equipment;
- 8.13.8 the Equipment is used in a manner for which it is not intended; or
- 8.13.9 the Equipment is used other than as permitted under the Agreement.
- 9. FEES AND PAYMENT**
- 9.1 The Client shall pay to the Supplier the Hire Fees as rent for the Equipment and, where applicable, any Delivery Charges with any other fees and charges referred to in the Agreement (including in Clauses 8.10 and 8.12).
- 9.2 Unless otherwise agreed in writing between the Parties, each calendar day period constitutes one day's hire. The Hire Fees for each piece of Equipment shall be as set out in the Quote or as otherwise agreed in writing between the Parties; and shall be payable for the Hire Period, or if applicable as set out in Clause 3.6.2 (provided that in such case the Client shall further pay to the Supplier the cost of repairing or replacing such Equipment as soon as reasonably practicable).
- 9.3 On termination or expiry of the intended Hire Period, unless otherwise agreed in writing by the Supplier, additional Hire Fees shall apply and be payable by the Client to the Supplier at the rates set out in the Quote (but without any discount that may otherwise have applied) until the Equipment is back in the Supplier's possession in the form required under the Agreement.
- 9.4 If any delivery or collection of the Equipment is requested by the Client and performed by the Supplier outside of the Supplier's normal business hours or to a different location or with waiting time, the Supplier may charge, and the Client shall pay, additional fees at the Supplier's usual rates in respect of those services.
- 9.5 The Supplier shall issue invoices to the Client for:
- 9.5.1 the Hire Fees and, where applicable, any Delivery Charges with any other applicable fees and charges referred to in the Quote at the time of the delivery by the Supplier or collection by the Client of the Equipment; and
- 9.5.2 any other Hire Fees, fees or charges applicable under the Agreement, when they become known.
- 9.6 The Client shall pay the Hire Fees and, where applicable, any Delivery Charges, together with any other fees and charges referred to in the Agreement, at the times specified in the Quote or as reasonably required by the Supplier. Unless otherwise set out in the Quote, the Client shall pay within 30 days after the date of the Supplier's invoice. Time for payment shall be of the essence.
- 9.7 All sums due to the Supplier are exclusive of VAT and other duties or taxes (if applicable) which the Client shall pay to the Supplier in addition with any other payment.
- 9.8 The Client shall pay the Supplier by any payment method reasonably stipulated by the Supplier.
- 9.9 Payment shall be in the currency in force in England from time to time.
- 9.10 Payment shall be deemed made when the Supplier has received cleared funds in full.
- 9.11 Payment of all sums due to the Supplier under the Agreement shall be made by the Client in full without any set-off, deduction or withholding whatsoever.
- 9.12 If the Client is late in paying any part of any undisputed monies due to the Supplier under the Agreement, the Supplier may (without prejudice to any other right or remedy available to it whether under the Agreement or by any statute, regulation or bye-law) do any or all of the following:
- 9.12.1 charge interest and other charges on the amount due but unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;
- 9.12.2 suspend any further Equipment that were going to be made available to the Client (whether under the Agreement or any other agreement between the Parties) and the performance of the Agreement and any other agreement between the Parties, until payment in full has been made;
- 9.12.3 charge the Client for the costs of commissioning a third party to retrieve (or attempt to retrieve) the overdue sums from the Client;
- 9.12.4 suspend the Client's right to use the Equipment; and
- 9.12.5 collect the Equipment (at the Client's cost).
- 10. LIMITATION OF LIABILITY**
- 10.1 This Clause 10 prevails over all other Clauses and sets forth the entire Liability of the Supplier, and the Client's sole and exclusive remedies, in respect of:
- 10.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of the Agreement or of any goods or services (including the Equipment and Maintenance Services), in connection with the Agreement; or
- 10.1.2 otherwise in relation to the Agreement or entering into the Agreement.
- 10.2 The Supplier does not exclude or limit its Liability for:
- 10.2.1 its fraud; or
- 10.2.2 death or personal injury caused by its negligence; or
- 10.2.3 any breach of the non-excludable obligations implied by statute in respect of the Supplier having title or right to supply the Equipment; or
- 10.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 10.3 Subject to Clause 10.2, the Supplier shall not have Liability to the Client in respect of any: (a) indirect or consequential losses, damages, costs or expenses; (b) loss of actual or anticipated profits; (c) loss of contracts; (d) loss of use of money; (e) loss of anticipated savings; (f) loss of revenue; (g) loss of goodwill; (h) loss of reputation; (i) loss of business; (j) ex gratia payments; (k) loss of operation time; (l) loss of opportunity; or (m) loss of, damage to or corruption of, any data; whether or not such losses were reasonably foreseeable or the Supplier or its agents had been advised of the possibility of the Client incurring such losses. For the avoidance of doubt, (b) to (m) apply whether such losses are direct, indirect, consequential or otherwise.
- 10.4 Subject to Clause 10.2, and subject to any specific right or remedy expressly set out in the Agreement that explicitly provides that the following cap may be exceeded, the total aggregate Liability of the Supplier for all causes of action arising under or in connection with the Agreement shall not exceed: (a) £10,000; or (b) 110% of the total sums paid and total other sums payable, in aggregate, by the Client to the Supplier under the Agreement.
- 10.5 The limitation of Liability under Clause 10.4 has effect in relation both to any Liability expressly provided for under the Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of the Agreement.
- 10.6 In the Agreement, "Liability" means liability in or for breach of contract, tort, negligence, misrepresentation, breach of statutory duty, restitution or any other cause of action whatsoever relating to or arising under or in connection with the Agreement, including, liability expressly provided for under the Agreement or arising by reason of the invalidity or unenforceability of any term of the Agreement (and for the purposes of this definition, all references to "the Agreement" shall be deemed to include any collateral contract).
- 10.7 Except where expressly provided for within the Agreement, the Supplier excludes all conditions, warranties, terms and representations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Equipment and Maintenance Services.
- 11. CONFIDENTIALITY**
- 11.1 Each Party shall keep and procure to be kept secret and confidential the Confidential Information of the other Party and shall not use nor disclose the same save:
- 11.1.1 for the purposes of the proper performance of the Agreement; or
- 11.1.2 as otherwise permitted by the Agreement; or
- 11.1.3 with the prior written consent of the other Party.
- 11.2 Where one Party discloses Confidential Information of the other Party to its employee, officer, director, consultant, contractor, agent, representative, customer, professional adviser or insurer, it shall do so on a need-to-know basis and subject to obligations equivalent to those set out in this Clause 11. Each Party shall use all reasonable endeavours to ensure that any such employee, officer, director, consultant, contractor, agent, representative, customer, professional adviser or insurer complies with such obligations.
- 11.3 The obligations of confidentiality in this Clause 11 shall not extend to any matter which either Party can show:
- 11.3.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of the Agreement; or
- 11.3.2 was in its written records prior to receipt; or
- 11.3.3 was independently developed by it; or
- 11.3.4 was independently disclosed to it by a third party entitled to disclose the

same.

- 11.4 If either Party is required to disclose the Confidential Information of the other Party under any applicable laws, or by order of a court or governmental body or authority of competent jurisdiction or to a regulator, then the Party so required may disclose the Confidential Information to the extent required but shall, prior to any disclosure where practicable and legally permissible, give the other Party as much warning thereof as practicable and inform in writing and consult with the other Party and, at the other Party's request and cost, fully co-operate with and assist that other Party in opposing any such disclosure.
- 11.5 The obligations of this Clause 11 shall continue after termination or expiry of the Agreement for whatever reason.

12. TERM AND TERMINATION

- 12.1 The Agreement shall be legally formed and commence in accordance with Clause 2.6 and, subject to either Party terminating the Agreement pursuant to its termination rights under the Agreement, shall continue in force until the latest of the date on which:
- 12.1.1 all the Equipment has been returned to or collected by the Supplier;
 - 12.1.2 the Supplier receives full replacements of all the Equipment where these have been lost, stolen or irreparably damaged; or
 - 12.1.3 the Supplier has been paid in full for all Hire Fees and, where applicable, any Delivery Charges and other fees and charges in accordance with the Agreement.
- 12.2 Either Party may terminate the Agreement by notice to the other Party with immediate effect if:
- 12.2.1 the other Party is in material breach of any of its obligations under the Agreement or any other agreement between the Parties which is incapable of remedy; or
 - 12.2.2 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under the Agreement or any other agreement between the Parties after having been required in writing to remedy such breach within a period of no less than 30 days (except for late payment of Hire Fees, any Delivery Charges or any other fees and charges referred to in the Agreement, in which case the period for remedy shall be no less than seven Business Days); or
 - 12.2.3 the other Party is in persistent breach of any of its obligations under the Agreement or any other agreement between the Parties (and this shall include late payment on two or more occasions, regardless of whether such late payment is remedied); or
 - 12.2.4 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 12.2.5 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 12.2.6 the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.
- 12.3 The Supplier may terminate the Agreement by notice to the Client with immediate effect if:
- 12.3.1 the Client uses the Equipment contrary to the terms of the Agreement;
 - 12.3.2 the Client grants to a third party rights in respect of the Equipment or purports to do so in contravention of the Agreement; or
 - 12.3.3 the Supplier reasonably believes that the Equipment is at grave risk from continued neglect of the duties of care on the Client under the Agreement.
- 12.4 The Client may terminate the Agreement or cancel the hire of any specific Equipment before the Commencement Date, provided that the Client pays a Cancellation Fee calculated as follows:
- | Cancellation point | Cancellation Fee |
|---|---|
| 8 days or more before the Commencement Date | 25% of the Hire Fee for the cancelled Equipment |
| 2 - 7 days before the Commencement Date | 50% of the Hire Fee for the cancelled Equipment |
| Less than 48 hours before the Commencement Date | 75% of the Hire Fee for the cancelled Equipment |
- 12.5 Termination or expiry of the Agreement shall be without prejudice to any accrued rights or remedies of either Party.
- 12.6 Termination or expiry of the Agreement will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination or expiry.
- 12.7 Upon termination or expiry of the Agreement for any reason:
- 12.7.1 the Supplier shall cease to perform the Agreement;
 - 12.7.2 all outstanding fees and charges or any part thereof provided shall become immediately payable, whether invoiced or not;
 - 12.7.3 the owner of Confidential Information may at its option require the other Party to delete promptly all Confidential Information from any computer disks, tapes or other material in its possession or under its control or promptly deliver up or destroy materials and tangible items in its possession or under its control which contain any Confidential Information belonging to the Party requiring the action. The owner of Confidential Information may require the other Party to provide a written declaration, signed by an officer or other authorised individual stating that there has been full compliance with this Clause 12.7.3; and
 - 12.7.4 the Client shall promptly return to the Supplier, and the Supplier may collect, all Equipment in its possession or control at the Client's cost and risk.

13. FORCE MAJEURE

- 13.1 The Supplier shall not have any Liability for any breach, hindrance or delay in the performance of the Agreement attributable to any cause beyond its reasonable control, including any act of God, actions or omissions of third parties not in the same group as the Supplier (including hackers, suppliers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, seizure or forfeiture, breaking off of diplomatic relations or similar actions, national emergencies, actual or threatened or suspected terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or

combinations or lock-out of workmen, unusual traffic volumes, unusual travel restrictions, pandemic (including COVID-19), epidemic, fire, explosion, storm, flood, drought, adverse weather conditions (including cold, heat, wind, rain, snow, ice or fog), loss at sea, earthquake, volcano, ash cloud, natural disaster, accident, mechanical breakdown, third party software, collapse of building structures, failure of machinery (other than used by the Supplier) or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation ("**Event of Force Majeure**"), regardless of whether the circumstances in question could have been foreseen.

- 13.2 The Supplier agrees to inform the Client in writing upon becoming aware of an Event of Force Majeure, providing details of the circumstances giving rise to the Event of Force Majeure.
- 13.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and each Party shall be granted an extension of time for performance equal to the period of the delay.
- 13.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 13.5 If performance of any obligations are delayed under this Clause 13, each Party shall nevertheless accept performance as and when the Parties shall be able to perform.
- 13.6 If the Event of Force Majeure continues without a break for more than one week, the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 13.7 If the Event of Force Majeure continues without a break for more than three months, either Party may terminate the Agreement immediately by notice to the other, in which event neither Party shall have any Liability by reason of such termination.
- 13.8 If the Supplier has contracted to provide identical or similar equipment, products or services to more than one client and is prevented from fully meeting its obligations to the Client by reason of an Event of Force Majeure, the Supplier may decide at its absolute discretion which contracts it will perform and to what extent.

14. NOTICES

- 14.1 Any notice required or authorised to be given under the Agreement shall be in writing and shall be served by personal delivery or recorded delivery letter or by commercially recognisable overnight courier or by email addressed to the relevant Party at its address stated in the Agreement or at such other address or email address as is notified by the relevant Party to the other for this purpose from time to time or at the address or email address of the relevant Party last known to the other.
- 14.2 Any notice so given by recorded delivery or commercially recognised overnight courier shall be deemed to have been served two Business Days after the same shall have been posted by recorded delivery or despatched to a commercially recognisable overnight courier and any notice so given by email shall be deemed to have been served upon receipt by the sender of a confirmation of a successful delivery report from the recipient's server, and in proving such service it shall be sufficient to prove that the letter was properly addressed and signed for at the address of the recipient or that the email was properly addressed and a confirmation of a successful email delivery report was received.

15. ASSIGNMENT

- 15.1 Subject to any assignee (in the case of an assignment) confirming in writing to be bound by the provisions of the Agreement, the Supplier may assign, transfer, novate or subcontract its rights, liabilities or obligations under the Agreement either in whole or in part to any other person, firm or company.
- 15.2 The Client shall not (or purport to) assign, sub-license, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with the Agreement or any of its rights, liabilities or obligations under the Agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

16. GENERAL

- 16.1 Unless a Party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay or omission by either Party in exercising any power, right or remedy under the Agreement or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any powers, rights or remedies in respect of it or in any way modify or diminish that Party's other powers, rights or remedies under the Agreement or at law.
- 16.2 If any Clause or other provision in the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.
- 16.3 Nothing in the Agreement shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the Parties.
- 16.4 Save for assignees and/or successors in title of the Supplier, a person who is not a Party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 16.5 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. The Parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle and dispute or claim or matter brought by the Client in relation to the Agreement or its subject matter or formation. Nothing in this Clause 16.5 shall limit the right of the Supplier to take proceedings against the Client in any other court of competent jurisdiction. All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

I have read the terms and conditions (pages 1,2,3,4,5) and I agree.

Signature: _____

Print Name: _____

For and on behalf of: _____

Date: _____