

FORK LIFT TRUCK ASSOCIATION MEMBER HIRE TERMS AND CONDITIONS

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

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 together with the relevant Hire Agreement Form;
"Business Day"	any day other than (i) a Saturday, (ii) a Sunday or (iii) a day when the clearing banks are not physically open for business in the City of London;
"Commencement Date"	the date stipulated in the Hire Agreement Form as the start date for the beginning of the Hire Period (or if none is stipulated there it shall be the date of delivery of the Equipment to the Customer);
"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 (and the Supplier's Confidential Information shall include any information relating to the Supplier's Representatives);
the "Customer"	the Customer, of the Supplier, whose details are set out in the Hire Agreement Form;
"Delivery Charges"	the delivery, loading, unloading, freight (if any) and collection charges stated in the Hire Agreement Form or as otherwise calculated in accordance with the Supplier's customary charging practices from time to time;
"Equipment"	any of the Supplier's machines (and any attachments, fittings or replacements) provided or to be provided by the Supplier to the Customer pursuant to the Agreement, as more particularly described in the Hire Agreement Form;
"Hire Agreement Form"	the equipment supplier's hire agreement document containing the specific information relating to the equipment and maintenance services to be supplied by the supplier to the customer;
"Hire Fees"	the hire fees payable by the Customer to the Supplier for the hire of the Equipment as may be set out in the Hire Agreement Form or as agreed in writing by the Parties from time to time;
"Hire Period"	the period or hire of the Equipment starting on the Commencement Date during which the Equipment is in the Customer'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 11.7;
"Location"	the Customer's premises, being the location for delivery of the Equipment, and the provision of the Maintenance Services, as may be set out in the Hire Agreement Form or otherwise agreed in writing between the Parties;
"Maintenance Services"	the services (which may include the routine servicing and inspection of the Equipment, the adjustment or replacement of any defective working parts caused by standard operating fair wear and tear discovered during any inspection and the repair and replacement of any parts) provided or to be provided by the Supplier to the Customer pursuant to the Agreement;
"Minimum Period"	the minimum period of hire for the Equipment as set out in the Hire Agreement Form;
"Party"	either the Supplier or the Customer (together the "Parties"), as entered on the Hire Agreement Form;
"Rental Application Survey Report"	the report completed by the Supplier in advance of the Hire Period regarding the suitability of the particular Equipment for its proposed use by the Customer;

"Representatives"	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 provided or to be provided by the Supplier to the Customer pursuant to the Agreement, which is more particularly described in the Rental Application Survey Report, or in any other document otherwise stated to be the specification by the Supplier;
the "Supplier"	the supplier identified in the Hire Agreement Form;
"Transport Note"	the transport note to be completed by the Customer on delivery of the Equipment;
"Year"	a period of 12 months commencing on the Commencement Date, or each subsequent period of 12 months commencing on an anniversary of the Commencement Date;

- 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 the execution of the Hire Agreement Form by the Supplier 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 Customer acknowledges that it is not entering into the Agreement in reliance upon any such materials or other particulars. The Customer 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 Hire Agreement Form, then the provisions of the Hire Agreement Form shall prevail over the provisions in these Terms and Conditions.
- 2.5 If the Customer provides the Supplier with an order, purchase order, confirmation of order, specification or other document for the Equipment and Maintenance Services, such document shall be purely for the Customer's administrative purposes only and shall not form part of the Agreement.
- 2.6 The Agreement shall be legally formed and the Parties shall be legally bound when both Parties have signed the Hire Agreement Form.
- 2.7 It is the Customer's responsibility to ensure that the Hire Agreement Form is complete and accurate and to point out to the Supplier in writing anything which is incomplete or inaccurate in the Customer's details or which the Customer wishes to obtain under the Agreement.
- 2.8 Each Hire Agreement Form 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 add any new Equipment that are not covered in the Hire Agreement Form, 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 Delivery Charges that may apply in respect of such new Equipment.

3. CUSTOMER'S OBLIGATIONS

- 3.1 The Customer 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 during the Hire Period, take all reasonable care of the Equipment, and use the Equipment in a skilful and proper manner;
 - 3.1.5 employ and utilise a fully trained and licensed operator to operate the Equipment during the Hire Period capable of operating the Equipment in a safe and proper manner;
 - 3.1.6 undertake routine daily maintenance of the Equipment and any other routine and periodical checks as specified by the Instructions and maintain a formal written record of such maintenance and checks and make this record available for inspection by the Supplier;
 - 3.1.7 at all times 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 Customer ensuring that:
 - (a) the Equipment are protected against damage from other goods or materials;
 - (b) all precautions are taken to avoid any damage or destruction to the Equipment; and
 - (c) a detailed risk assessment is taken for the Location prior to commencement of the Hire Period;
 - 3.1.8 unless otherwise set out in the Hire Agreement Form, promptly return the Equipment to the Supplier (at the Customer's cost) on the expiry of the Hire Period or on the termination of the Agreement (whichever is earlier);
 - 3.1.9 pay the Hire Fees for the entire Hire Period and the Delivery Charges and at the times required by the Agreement;
 - 3.1.10 provide a safe, comfortable and suitable environment for when the Representatives undertake any Maintenance Services at the Location (including in conformance with any site requirements or restrictions affecting the Supplier's ability to provide the Maintenance Services previously made known to the Customer by the Supplier or the Representatives), and the Customer shall inform the Supplier with sufficient detail in good time prior to the arrival at the Location if it is unable to provide such environment;
 - 3.1.11 promptly comply with the reasonable requests of the Supplier from time to time in connection with the Agreement; and
 - 3.1.12 comply with all Instructions for storage, maintenance or use of the Equipment as the Supplier or the Representatives make known to the Customer from time to time (including as to health and safety suggestions), but any decision as to storage, maintenance or use of the Equipment other than in accordance with the Instructions or the Supplier's or its Representatives' written advice, recommendation and instructions shall be entirely at the Customer's risk.
- 3.2 The Customer shall not:
 - 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 use the Equipment on any public road without the prior written approval of the Supplier; and, if the approval is obtained, the Customer shall ensure any driver holds a valid driving licence for use of the Equipment on a public road; or
 - 3.2.6 use the Equipment in any way which would violate the requirements set out in the Rental Application Survey Report.
- 3.3 The Customer 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 including serious harm and/or injury to third parties which the Customer shall be responsible for paying any attributable costs in full.
- 3.4 At all reasonable times and upon reasonable advance warning, the Customer shall permit the Supplier and their Representatives to have access to any place at which the Equipment is being used or kept to inspect to ensure that the Customer 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 Customer is not complying with the terms of the Agreement; or
 - 3.5.2 the Equipment have been or will be damaged or rendered inoperable for whatever reason; or
 - 3.5.3 the Customer'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 Customer 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 the Customer until the time that it is successfully received back to the Supplier:
 - 3.6.1 the Supplier shall have a right to charge the Customer for the repair or replacement of the same on a "market value" basis; and
 - 3.6.2 the Supplier may continue to charge the Customer for Hire Fees 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:
 - 4.1.1 deliver the Equipment to the Customer at the Location; and
 - 4.1.2 provide the Maintenance Services (if applicable);in accordance with the terms and conditions of 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 Customer or the Customer's agents, staff, officers, employees, representatives, contractors or customers or by any breach by the Customer 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 Customer to perform any of its obligations; or
 - 4.3.2 the Customer 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 Customer; and
 - (b) the Customer 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. DELIVERY OF THE EQUIPMENT**
- 5.1 The Customer shall ensure that it is ready for safe receipt of the Equipment on the Commencement Date set out in the Hire Agreement Form or as otherwise agreed between the Parties. The Customer shall be responsible for unloading and reloading the Equipment at the Location, and any driver or operator provided by the Supplier in connection with the delivery or collection of the Equipment shall be deemed to be under the Customer's control at the Location.
- 5.2 Upon delivery of the Equipment, the Customer shall examine and check the Equipment to ensure that it is visibly in good condition and working satisfactorily before the Customer accepts it or begins to use it. The Customer shall be required to sign a Transport Note and other documentation upon delivery of the Equipment. The signature of any person purporting to be an authorised representative of the Customer on the Transport Note or other documentation shall be sufficient evidence that:
 - 5.2.1 the Supplier has delivered the Equipment in accordance with the Agreement;
 - 5.2.2 the Customer has examined and checked the Equipment and confirms that it is visibly in good condition and working satisfactorily; and
 - 5.2.3 the Customer has been made aware of any information and Instructions (including as to safe use of the Equipment) contained within or referred to in the documentation.
- 5.3 If delivery is delayed through the Customer's unreasonable refusal to accept delivery, 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 Hire Agreement Form and charge the Customer for the Hire Fees for the Hire Period (without any deductions) as if the Hire Period had proceeded as envisaged notwithstanding the delayed delivery.

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 Customer on their delivery to the Customer, and the Customer 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 Customer, the Supplier will not have any Liability for loss, damage or destruction of the Equipment.

6.2 Where delivery is delayed due to the Customer's breach of the Customer's obligations, risk shall pass to the Customer at the date when delivery would have occurred but for the Customer's breach.

7. OWNERSHIP AND INSURANCE FOR EQUIPMENT

7.1 As between the Parties, the Supplier retains ownership in the Equipment and so the Customer 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 Customer shall inform the Supplier immediately. The rights granted to the Customer under the Agreement are personal to the Customer and are non-transferable and non-sublicensable and the Customer shall only use the Equipment for its own use.

7.2 The Customer shall ensure that the Equipment is insured from the time of delivery by the Supplier to 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 Customer shall ensure that the Supplier's interest is noted on its insurance policy. The Customer shall at 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 Customer 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 Customer shall inform the police as soon as is reasonably practicable. In the case of any loss, theft or damage to the Equipment, the Customer shall hold the proceeds of insurance for such loss, theft or damage for and to the Supplier's order.

8. MAINTENANCE SERVICES

8.1 The Supplier shall attend the Location at a frequency as is reasonably determined by the Supplier and at times in consultation with the Customer to perform the Maintenance Services in respect of the Equipment. 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 Customer and performed by the Supplier outside of normal business hours, the Supplier may charge, and the Customer shall pay, additional fees in respect of those services.

8.2 The Customer shall ensure that it is ready and available for receipt of the Maintenance Services on the date and times agreed between the Parties.

8.3 Where the Supplier is performing or has performed the Maintenance Services in circumstances where it is established that the Equipment was not in good working order due to the fault of the Customer or a breach of the Agreement by the Customer, the Supplier may charge, and the Customer shall pay, additional repair fees in respect of that work in accordance with Clause 9.10.

8.4 The Customer shall ensure that only the Supplier (or the Representatives) carries out the Maintenance Services or any other maintenance, modifications, replacements or repairs to the Equipment except to the extent that the Supplier otherwise specifically agrees in writing.

9. WARRANTY FOR EQUIPMENT AND MAINTENANCE SERVICES

9.1 Subject to the Customer complying with Clause 3, the Supplier warrants that:

- 9.1.1 the Equipment shall materially conform to the Specification;
- 9.1.2 the Equipment is suitable for the Customer's proposed use and it will meet the Customer's requirements, strictly to the extent that this is set out in the Rental Application Survey Report;
- 9.1.3 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 Customer, in accordance with the Specification;
- 9.1.4 it shall use reasonable skill and care in providing the Maintenance Services;
- 9.1.5 its Representatives have the necessary skill to provide the Maintenance Services;
- 9.1.6 the Maintenance Services will be provided in a professional, competent and workmanlike manner;
- 9.1.7 while at the Location, it and its Representatives shall conform to the Customer's normal codes of staff and security practice as are advised to them in good time by the Customer; and

9.1.8 it has all necessary rights, permissions and consents to enter into the Agreement.

- 9.2 The Supplier is not responsible for any services or equipment not expressly stipulated in the Agreement that the Supplier will provide.
- 9.3 Except for any matter upon which the Supplier specifically agrees in writing with the Customer 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). It is the Customer's responsibility to ensure that the Equipment meets its requirements and purposes.
- 9.4 Except to the extent expressly stated in the Rental Application Survey Report and covered by the warranties in Clauses 9.1.1 to 9.1.3 (inclusive), the Supplier does not warrant that the Equipment will perform to any performance levels.
- 9.5 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 Customer's instructions or requirements.
- 9.6 The warranties contained in Clause 9.1 are specifically limited to the Customer. No warranty is made by the Supplier to any other person.
- 9.7 If the Customer finds the Equipment or Maintenance Services to be defective or deficient according to the standard in Clause 9.1, or if the Supplier fails to provide the Maintenance Services, the Customer shall inform the Supplier in writing immediately and give to the Supplier full details of the defect or deficiency, but the Customer shall meanwhile continue to pay the Hire Fees (provided that the Supplier repairs or replaces the Equipment, or re-performs (or performs) the Maintenance Services, within a reasonable time).
- 9.8 Subject to Clause 9.9, the Supplier shall at its option (and as the Customer's exclusive remedy):
 - 9.8.1 repair or replace or re-perform; or
 - 9.8.2 provide an appropriate refund of the Hire Fees for; the delivered Equipment or Maintenance Services which are not in conformance with the warranty set out in Clause 9.1, within a reasonable time.
- 9.9 Where the Customer has informed the Supplier of any defects or deficiency in the Equipment or Maintenance Services and given full details thereof, the Supplier shall use its reasonable endeavours (as soon as reasonably possible) to replace the Equipment or re-perform Maintenance Services or remedy the defect or deficiency without additional charge. Subject to Clause 11 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 Customer's use of, or the Customer's inability to use, the Equipment or receive the Maintenance Services in such circumstances.
- 9.10 The Supplier may charge to repair or replace the Equipment where:
 - 9.10.1 the condition of the Equipment has resulted from improper use, accident, neglect or any other causes external to the Equipment during the Hire Period;
 - 9.10.2 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 Customer under the Agreement;
 - 9.10.3 the Customer makes or causes to be made any modifications to the Equipment (or attempts to do so) without the Supplier's written consent;
 - 9.10.4 the Customer operates the Equipment or causes them to be so operated contrary to the Instructions;
 - 9.10.5 the Equipment is used in combination with any equipment or materials not approved by the Supplier;
 - 9.10.6 the Customer has not taken appropriate protective measures to safeguard the Equipment in accordance with the Agreement;
 - 9.10.7 there is a puncture or damage to tyres;
 - 9.10.8 the Equipment is used in a manner for which it is not intended; or
 - 9.10.9 the Equipment is used other than as permitted under the Agreement.

10. FEES AND PAYMENT

- 10.1 The Customer shall pay to the Supplier the Hire Fees as rent for the Equipment, the Delivery Charges and with any other fees and charges referred to in the Agreement (including in Clause 9.10).
- 10.2 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 Hire Agreement or as otherwise agreed in writing between the Parties; and shall be payable for the Hire Period (including any Minimum Period described in the Hire Agreement Form), or if applicable as set out in Clause 3.6.2 (provided that in such case the Customer shall further pay to the Supplier the cost of repairing or replacing such Equipment as soon as reasonably practicable).
- 10.3 On termination or expiry of the relevant Hire Period, then (unless otherwise agreed in writing by the Supplier) additional Hire Fees shall apply and be payable by the Customer to the Supplier at the rate set out in the Hire Agreement Form until the Equipment is back in the Supplier's possession in the form required under the Agreement.

- 10.4 The Supplier shall issue invoices to the Customer for the Hire Fees, the Delivery Charges and other fees and charges referred to in the Hire Agreement Form (as applicable).
- 10.5 The Customer shall pay the Hire Fees, Delivery Charges and where applicable any other fees and charges referred to in the Agreement at the times specified in the Hire Agreement Form or as reasonably required by the Supplier. Unless otherwise set out in the Hire Agreement Form, the Customer shall pay within 30 days after the date of the Supplier's invoice and in advance of the hire. Time for payment shall be of the essence.
- 10.6 All sums due to the Supplier are exclusive of VAT and other duties or taxes (if applicable) which the Customer shall pay to the Supplier in addition with any other payment.
- 10.7 The Customer shall pay the Supplier by any payment method reasonably stipulated by the Supplier.
- 10.8 Payment shall be in the currency in force in England from time to time.
- 10.9 Payment shall be deemed made when the Supplier has received cleared funds in full.
- 10.10 Payment of all sums due to the Supplier under the Agreement shall be made by the Customer in full without any set-off, deduction or withholding whatsoever.
- 10.11 If the Customer 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:
- 10.11.1 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;
- 10.11.2 suspend any further Equipment and Maintenance Services that were going to be made available to the Customer (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;
- 10.11.3 suspend the Customer's right to use the Equipment; and
- 10.11.4 collect the Equipment (at the Customer's cost).
- 10.12 Subject to clause 10.13, the Supplier may increase the Hire Fees in respect of any Hire Fees not yet incurred by no less than one month's prior written warning subject to the increase:
- 10.12.1 not taking effect in the same Year as any preceding increase for the same Hire Fees; and
- 10.12.2 not being at more than 2.5% or (if higher) the previous annual all-items percentage increase figure in the retail prices index (or, if that index ceases to exist, its closest replacement index) announced by the UK government before the Supplier's announced increase.
- 10.13 The Supplier may, at any time during the Hire Period, increase the Hire Fees payable by the Customer, by no less than one month's prior written warning to the Customer, if the Customer's usage of the Equipment changes from that specified at the Commencement Date, or there has been a material alteration in the facts specified in any Rental Application Survey Report. For the purpose of this Clause 10.13, changes in usage will include: an increase in the number of working hours in running the Equipment, a change of working environment, change of working application, change of shift pattern, change of intensity of operation, or a change of location.
- 10.14 The Customer has no contractual right to work excess hours, and the express permission of the Dealer must be obtained. The Dealer has the absolute right to specify a finite limit to the number of hours the equipment can be worked, and the right to put the equipment out of use if these hours are exceeded.
- 11. LIMITATION OF LIABILITY**
- 11.1 This Clause 11 prevails over all other Clauses and sets forth the entire Liability of the Supplier, and the Customer's sole and exclusive remedies, in respect of:
- 11.1.1 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
- 11.1.2 otherwise in relation to the Agreement or entering into the Agreement.
- 11.2 The Supplier does not exclude or limit its Liability for:
- 11.2.1 its fraud; or
- 11.2.2 death or personal injury caused by its negligence; or
- 11.2.3 any breach of the non-excludable obligations implied by statute in respect of the Supplier having title or right to supply the Equipment; or
- 11.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 11.3 Subject to Clause 11.2, the Supplier shall not have Liability to the Customer 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 Customer incurring such losses. For the avoidance of doubt, (b) to (m) apply whether such losses are direct, indirect, consequential or otherwise.
- 11.4 Subject to Clause 11.2, the total aggregate Liability of the Supplier, and subject to any specific right or remedy expressly set out in the Agreement that explicitly provides that the following cap may be exceeded, for damage to tangible property shall not exceed £1,000,000 per Year (or such other amount as is agreed between the Supplier and the Customer in writing).
- 11.5 Subject to Clause 11.2 and except for any Liability provided in Clause 11.4, 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 in each Year shall be limited to the greater of: (a) £10,000; or (b) 110% of the total sums paid and total other sums payable, in aggregate, by the Customer to the Supplier under the Agreement, in that Year (or such other amount as is agreed between the Supplier and the Customer in writing).
- 11.6 The limitations of Liability under Clauses 11.4 and 11.5 have 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.
- 11.7 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).
- 11.8 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.
- 12. CONFIDENTIALITY**
- 12.1 Each Party undertakes that it shall not disclose to any person the other Party's Confidential Information except as permitted by Clause 12.2.
- 12.2 Each Party may disclose the other Party's Confidential Information:
- 12.2.1 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 the Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Clause 12; and
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 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 the Agreement.
- 12.4 The obligations of this Clause 12 shall continue after termination or expiry of the Agreement for whatever reason.
- 13. TERM AND TERMINATION**
- 13.1 The Agreement shall commence on the Commencement Date 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:
- 13.1.1 the Equipment has been returned to the Supplier;
- 13.1.2 the Supplier receives full replacements of all the Equipment where these have been lost, stolen or irreparably damaged; or
- 13.1.3 the Supplier has been paid for all Hire Fees, Delivery Charges and other fees and charges in accordance with the Agreement in full.
- 13.2 When the Parties agree a Minimum Period, subject to earlier termination pursuant to the Agreement, the Agreement shall nevertheless continue on an indefinite basis following expiry of the Minimum Period where the Customer continues in possession of the Equipment until the Equipment are returned to the Supplier in good usable condition.
- 13.3 Either Party may terminate the Agreement immediately by notice to the other Party if:
- 13.3.1 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
- 13.3.2 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, 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 five Business Days); or
- 13.3.3 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
- 13.3.4 the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts as they come due, or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party), or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 13.4 The Supplier may terminate the Agreement immediately by notice to the Customer if:
- 13.4.1 the Customer uses the Equipment contrary to the terms of the Agreement;
- 13.4.2 the Customer grants to a third party rights in respect of the Equipment or purports to do so in contravention of the Agreement; or
- 13.4.3 the Supplier reasonably believes that the Equipment is at grave risk from continued neglect of the duties of care on the Customer under the Agreement.
- 13.5 Termination or expiry of the Agreement shall be without prejudice to any accrued rights or remedies of either Party.
- 13.6 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.
- 13.7 Upon termination or expiry of the Agreement for any reason:
- 13.7.1 the Supplier shall cease to perform the Agreement;
- 13.7.2 all outstanding fees and charges or any part thereof provided shall become immediately payable, whether invoiced or not;
- 13.7.3 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 13.7.3; and
- 13.7.4 the Customer shall promptly return to the Supplier, and the Supplier may collect (at the Customer's cost), all Equipment in its possession or control at its own cost and its own risk.
- 13.8 For the avoidance of doubt, the Hire Fees for the full Minimum Period are deemed due upon commencement of the Agreement. Therefore, if termination takes place during the Minimum Period (save where the Customer terminates as a result of the Supplier's breach in accordance with Clause 13.3, or in accordance with Clause 14.7) then all outstanding Hire Fees for the remainder of the Minimum Period shall become immediately payable to the Supplier, less a discount for accelerated payment at a rate of 3% per annum.
- 14. FORCE MAJEURE**
- 14.1 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, 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.
- 14.2 The Supplier agrees to inform the Customer in writing upon becoming aware of an Event of Force Majeure, providing details of the circumstances giving rise to

the Event of Force Majeure.

- 14.3 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.
- 14.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 14.5 If performance of any obligations are delayed under this Clause 14, each Party shall nevertheless accept performance as and when the Parties shall be able to perform.
- 14.6 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.
- 14.7 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.
- 14.8 If the Supplier has contracted to provide identical or similar products or services to more than one customer and is prevented from fully meeting its obligations to the Customer 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.
- 15. NOTICES**
- 15.1 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.
- 15.2 Any notice so given by post 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.
- 16. ASSIGNMENT**
- 16.1 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.
- 16.2 The Customer 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).
- 17. GENERAL**
- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 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 Customer in relation to the Agreement or its subject matter or formation. Nothing in this Clause 17.5 shall limit the right of the Supplier to take proceedings against the Customer in any other court of competent jurisdiction. All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

Last updated: September 2019