

STANDARD TERMS AND CONDITIONS OF HIRE (NON-MAINTAINED)

1.0 DEFINITIONS

- 1.0 The company firm or person letting the equipment on hire being the owner, is hereinafter referred to as "we" or "us" and this expression includes their Successors.
- 1.1 The company firm or person taking the owner's equipment on hire is hereinafter referred to as "you" and this expression includes their Successors.
- 1.2 "Agreement" means the Hire Agreement, the Credit/Sales Application and these Terms and Conditions.
- 1.3 "Equipment" shall include any machine or part thereof and any attachments or fittings or replacements or any other item hired under this agreement, more particularly described in the Hire Agreement as Plant.
- 1.4 "Site" means the delivery/collection address as defined in the Hire Agreement.
- 1.5 "Hire Agreement" means the agreement entered into between the parties for the hire of the Equipment.
- 1.6 "Successors" means anybody corporate or person who may benefit from the use of the Equipment.
- 1.7 "MPH" means minimum period of hire.

2.0 LETTING/HIRE

2.1 Duration of Letting/Hire

- 2.1.1 We are letting and you are taking on hire for the purposes of your business the Equipment (including any replacement of and additions to it) for the period of hire as specified. The Agreement will continue in force unless written notice is given in accordance with clause 6 of this Agreement. The hiring will start on the Agreement date and will continue (subject to termination by us under clause 6) for a minimum period equal to the MPH until terminated by the hirer on giving 90 days written notice to us or by us giving 7 days written notice to you (to expire no earlier than the last day of the MPH).

- 2.1.2 In the event that a termination notice is not given and received in accordance with clause 2.1.1 before the expiry of the initial MPH, the Hire Agreement shall be deemed to be renewed for a further term of the same length as the original MPH (the **Renewed Term**).

In a Renewed Term, the Hire Agreement may be terminated by you on the provision of not less than 90 days' notice in writing provided that on the date of termination you pay to us a termination fee calculated in accordance with the following formula:

$$X/Y \times Z \times B = \text{termination fee payable}$$

Where:

X is the number of full months of the Renewed Term that are remaining;
Y is the original MPH (in full months);
Z is the total rent payable by the hirer in the Renewed Term; and
B is:

- (i) 66% if there have been no modifications made to the Equipment during or prior to the term of hire; or
- (ii) 75% if modifications have been made to the Equipment during or prior to the term of hire.

We may terminate the Hire Agreement in a Renewed Term on the provision of not less than 7 days' notice to you in writing.

YOUR OBLIGATIONS

Payment

- 2.2 You shall pay the rentals and the cost of transport to and from Site specified in the Agreement and (where applicable) the associated insurance and licensing effected by us pursuant to clauses 2.7 and 2.8 and (together with Value Added Tax) punctually in accordance with the Agreement without previous demand, only to us unless with prior written consent. Time for payment is of the essence. If payment is made by post, it will be at your risk.

Loss or Damage

- 2.3 You shall accept full responsibility to us for loss of or damage to the Equipment for whatever reason from the time the Equipment is delivered to Site until it is removed from the Site by us, or on our instructions. Without prejudice to the generality of the foregoing, you shall be responsible for the safekeeping of the Equipment, and its return to us in a condition which is acceptable by us. In addition you may not pledge or permit any lien to be created on the Equipment whilst the Equipment is on Site during any period prior to the commencement of the period of hire or after whilst the Equipment is awaiting collection.

Inspection and Identification

- 2.4 You shall allow us, or any agent appointed by us, access to inspect the Equipment (and if so required by us, allow us to indicate our ownership of the Equipment) and to adjust, repair or replace the Equipment, and you shall not remove or alter or permit to be removed or altered any identification or registration numbers or marks upon it.

Modification of Equipment

- 2.5 You shall not modify, change, replace or alter any component or part of the Equipment. If you are under any statutory enactment for a modification, the modification shall be at your expense.

Movement and Possession of Equipment

- 2.6 You shall keep the Equipment in your sole possession at the Site and in any event not without our prior written consent permit it to be removed from the Site and inform us of its location at any time we may require and not allow the levy of any distress or execution against the Equipment (nor in Scotland, allow any diligence to be done on the Equipment), nor sell, assign, mortgage, charge or sub-let the Equipment or any interest in it or the benefit of this Agreement.

Control of Equipment

- 2.7 The Equipment shall not come within your ownership but shall at all times after delivery to the Site be under your direction or control and you shall only allow it to be used for the purposes and in places for which it is suitable, and in a skilful, safe and workmanlike manner, and within its manufacturer's rated capacity. If the Equipment requires recovery for any reason, you shall be responsible for all costs incurred in its recovery.

- 2.7.1 You shall employ a fully trained and licensed operator (not being less than 18 years of age) capable of operating the Equipment in a safe and proper manner.
- 2.7.2 You shall not use or cause or permit any other person to use the Equipment on any public road without having obtained our prior written consent and where such consent is given you shall ensure that the driver holds a valid British driving licence including for use of the equipment on the public road. The cost of such licence shall be at your expense.

Insurance

- 2.8 You shall keep the Equipment insured at its full replacement value (as detailed in the Agreement) with full comprehensive cover and with insurers approved by us (such approval not to be unreasonably withheld) and reimburse us on demand any premium due but unpaid and which we elect to pay on your behalf and to full insure with such insurers in respect of all liability (on an indemnity basis) to us under this Agreement and in respect of your liability to third parties relating to the Equipment or its use, all at your expense, and you shall:-
- Produce the policy or policies effected hereunder for inspection by us on demand, and
 - Hold the proceeds of any claim under the said policy or policies in trust for us and apply such proceeds as we may direct.

And in the event that we agree any modification or restriction in the insurance cover or the Equipment is not found to be insured at all or not in its full replacement value or if the insurers for any reason repudiate any claim you shall fully indemnify against us against all loss expense and costs sustained by us.

Indemnities

- 2.9 As obligations surviving the termination of this Agreement and notwithstanding your obligation under clause 2.8, you shall indemnify us and keep us indemnified against all loss, damages, costs and expenses or injury suffered or incurred by us because of any third party claim (howsoever arising) out of the state, condition, letting or use of the Equipment or arising out of loss or damage to the Equipment (howsoever caused) and you shall notify us immediately in writing within 7 days of any loss or material damage to the Equipment.

Return of Plant

- 2.10 You must keep the Equipment free of all liens charges and distrains and return it at your expense on the expiry or sooner termination of the hire to us at such address as we may notify to you or to such other person as we may specify.

3.0 FURTHER STIPULATIONS

Late Payment

- 3.1 In the event of non-payment or late payment in excess of 7 days by you of any sum due under the Agreement, you shall forthwith (without prejudice to any other remedy we may have) pay to us any sums overdue and any costs and expenses incurred by us in recovering payment together with additional rental equivalent to interest, on a day to day basis, at the rate of 5% above the base rate of Barclays Bank Plc from time to time in force, from the due date until the date of actual payment (whether before or after any judgement). In addition, you will be charged an administration fee of the equivalent of 1 week's rental for the Equipment. This charge will be levied every 4 weeks until all outstanding amounts have been settled.

Limits of Liability

- 3.2 The following provisions set out our entire liability, including any liability for the acts or omission of our employees, agents, sub-contractors to you in respect of:
- (i) Any breach of our contractual obligations arising under the Agreement; and
 - (ii) Any representations, statement or tortious act or omission including negligence arising under or in connection with the Agreement and any delay, or the consequences of delay, in performing our obligations if the delay is due to your failure to notify us of any changes in your address or to any circumstances beyond our control.
- 3.3 We shall not be liable for any loss or damage sustained or incurred by you or any third party (including without limitation, any loss of use of the Equipment or Loss) resulting from any breakdown or defect in the Equipment (whether latent or apparent) howsoever caused.
- 3.4 Notwithstanding anything contained in the Agreement we shall not be liable to you for loss of profits, contracts or earnings or goodwill or any type of special indirect or consequential loss (including loss or damage suffered by you as a result of an action brought by a third party) whether arising from negligence, breach of contract or otherwise, even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the same.
- 3.5 You shall indemnify us and keep us fully effectively indemnified against any loss of or damage (including costs incurred by us) to any property or injury to or death of any persons caused in whole, or in part, or arising out of any negligent act or omission or wilful misconduct by you, your employees, agents or sub-contractors or by any breach of your contractual obligations.

Your Duties

- 4.1 You shall irrevocably agree to:-
- 4.1.1 Let us enter your premises to inspect, maintain and repair the Equipment in a suitable working environment;
 - 4.1.2 Carry out at your own expense routine daily maintenance of the Equipment in accordance with the manufacturer's recommendations, keep a formal written record of such daily maintenance which must be available for our inspection, and ensure that the Equipment is in complete repair and working condition;
 - 4.1.3 Keep the Equipment in a clean condition and free from debris or other material likely to affect normal operation of which might be harmful or hazardous to our engineers;
 - 4.1.4 Notify us immediately of any failure or reduction in the performance of the Equipment or any damage to it and stop using the Equipment if further damage is likely to occur;
 - 4.1.5 Instruct us, unless otherwise agreed in writing, to repair all punctures and replace damaged or worn tyres, all at your expense, including those that in our opinion need replacement.
 - 4.1.6 Where traction batteries are supplied, maintain the batteries and their chargers (at your own expense) in accordance with the manufacturer's recommendations, including installation, connection, charging, discharging and topping up; and

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- 4.1.7 Carry out any other routine and periodical checks as specified by the manufacturer.
4.1.8 We will undertake maintenance during our normal working hours of 9.00 a.m. to 4.00 p.m. Monday to Friday other than Bank Holidays and Public Holidays.

Increase in Cost of Maintenance

- 4.2 We reserve the right to increase the rentals payable under the Agreement by an equal amount to the equivalent increase in the Index of Retail Prices (all items) or 2.5% whichever is the higher, since the date of this Agreement (or the date of the last increase under this clause if later) if the cost of performing our obligations has increased.
4.2.1 This right will not be exercised more than once in each 3 month period.
4.2.2 We reserve the right to increase payments to be made by you under this Agreement if the usage of the equipment changes from that specified at the commencement of this agreement. Changes in usage will include, but are not limited to, an increase in the number of working hours in running the equipment, a change of working environment, or change a working application, change of shift pattern, changes of intensity of operations, or change of location.

Maintenance

- 4.3 We will at your expense, and you shall be responsible for all costs of maintenance, repairs, Thorough Examination, replacement of parts and servicing of the Equipment:-
4.3.1 Carry out the routine servicing and inspection of the Equipment at such intervals as we may reasonably decide including the replacement of any defective parts.
4.3.2 Repair or replace any parts deemed necessary for the safe operation of the Equipment. Our decision shall be conclusive and binding to you, and the cost of the repair will be charged to you.
4.3.3 Use all reasonable endeavours to supply spare/replacement components required to maintain the Equipment, using such components (whether service exchange parts or new parts) as we consider necessary.

5.0 CONFIDENTIALITY

Subject to sub-clause 8.2 below, each party shall treat as it does its own trade secret information, all information obtained from the other pursuant to the Agreement which is marked 'confidential' or the equivalent or has the necessary quality of confidence about it

6.0 DEFAULT AND TERMINATION

Upon any termination under this clause you shall pay to us immediately all amounts due under the Agreement.

- 6.1 The occurrence of any of the following events shall be and shall be deemed to be a repudiatory breach of this Agreement by you;
6.1.1 If you are an individual and you die or have a petition for a bankruptcy order made or presented against you or you enter into a Voluntary Arrangement;
6.1.2 If you are a company and you have a winding up petition made or presented against you or you are placed in liquidation or if a receiver, receiver and manager, administrator or administrative receiver is appointed over all or any part of your undertaking or assets;
6.1.3 If you cease or threaten to cease to carry on your business or dispose of a substantial part thereof or of your assets (other than in the normal course of your trade) or you are unable to pay your debts as they fall due, all within the meaning of section 123 of the Insolvency Act 1986;
6.1.4 If you suffer any execution or distress against any of the Equipment;
6.1.5 If you fail to pay any rental(s) or instalment due to us under this Agreement within 14 days of the due date(s) for payment or you commit any breach of any other term or condition of this Agreement (and fail to remedy the same, if capable of remedy, within 7 days of notice from us to do so);
6.1.6 If you are a company and in the event that you Ultimate Parent Company (the term parent company is defined in the Section 1162 of the Companies Act 2006, and Schedule 7) changes from the Ultimate Parent Company disclosed in your latest audited accounts filed at Companies House prior to the date of this Agreement;
6.1.7 If in our opinion, a material adverse change occurs in relation to your business; or
6.1.8 If in our opinion, our right to title to the Equipment is at risk.
6.1.9 You agree the Agreement and the right to possession of the Equipment will terminate automatically upon the termination of any head lease agreement entered into between us as the owner and any Equipment lessor by reason of our insolvency or default in the terms of such head lease.
6.1.10 If the equipment becomes an actual, constructive or deemed total loss for insurance purposes.
6.1.11 If you instruct us to collect, recover and/or remove the Equipment.
6.2 If you are treated as having repudiated this Agreement in the absence of a Successor, by the occurrence of any of the events referred to in clauses 6.1.2 and/or 6.1.3, then at our discretion this Agreement and the hiring of the Equipment thereunder shall terminate immediately and without notice to you. If you are treated as having repudiated this Agreement in the absence of a Successor, by the occurrence of any of the events referred to in clauses 6.1.4, 6.1.5, 6.1.6, 6.1.7, 6.1.8, 6.1.9, 6.1.10 and/or 6.1.11 we shall be permitted to terminate this Agreement forthwith upon notice to you.
6.3 Any termination of this Agreement and/or the hiring of the Equipment thereunder shall not be affected by any subsequent acceptance of any instalment of rentals, and upon any such termination your rights to the possession of the Equipment shall cease and we and/or our agents may without notice repossess the Equipment and for that purpose you irrevocably agree that we shall be entitled to enter any site or premises where the Equipment may be located.

7.0 PAYMENTS ON TERMINATION

On any termination of this Agreement you will immediately pay to us the aggregate of the Termination Sums referred to below:

- 7.1 All arrears of rentals and other sums;
7.2 If termination takes place during the MPH, by way of liquidated damages, all rentals which would but for termination have become due and payable from the date of termination up to the end of the MPH less a discount of each rental for accelerated payment at the rate of 3% per annum after all expenses incurred by us have been deducted;

- 7.3 If demanded, all costs and expenses incurred by us in returning the Equipment (including but not limited to; paintwork, forks, tyres, batteries, seat and chains) to a condition (excluding what we reasonably consider to be fair wear and tear), and/or standard that we consider acceptable and/or that we consider is equal to the condition and/or standard that the Equipment was in at the commencement of the Agreement.
7.4 If demanded, all costs and expenses incurred by us in repossessing the Equipment.
7.5 If demanded, storage charges of the Equipment at a cost of £15.00 + VAT per day for a period up to and including the MPH.
7.6 Your obligations under this clause will be treated as if they had arisen immediately before termination. For the avoidance of doubt, a Successor will be liable for all of the hirer's obligations under the Hire Agreement and any rental payments received by us will constitute our agreement for that Successor becoming a party to the Hire Agreement.

8.0 GENERAL

- 8.1 We will charge you for any losses, expenses and costs we have to pay if you break the Agreement.
8.2 You agree that we may disclose details of this transaction with your consent and that we may refuse to enter into this Agreement without stating a reason. All personal information about you will be treated as private and confidential and we will only use and disclose information held about you (which may include information which is deemed 'sensitive' under the Data Protection Act) and will not disclose any information to any other parties without your consent except in circumstances notified to you. You have a right to receive a copy of the information which is held by us. There is a fee payable if you want to do this. For more details write to us for the attention of The Data Protection Co-ordinator.
8.3 Any notices served hereunder shall be sufficiently served if sent by pre-paid letter post, or telex, or fax, or email to the usual or last known place of business of the addressee, and proof of dispatch shall be conclusive evidence of receipt by the addressee in the course of transmission. Any legal notices to us shall be marked for the attention of the Company Secretary.
8.4 If there are two or more of you, each of you is jointly and severally liable under this Agreement.
8.5 Although you may not assign this Agreement we may assign it and references to us shall include any such assignee.
8.6 Clause headings appear for ease of reference only and do not affect the construction of this Agreement.
8.7 This Agreement excludes and supersedes all claims, prior agreements, arrangements and understandings between you and us to the fullest extent permitted by law and contains all the terms of the hiring agreed between you the 'customer' and us.
8.8 An agreement for hire and supply of services shall exist on your acceptance of our hire quotation.
8.9 In the event of our reasonably concluding that there has been a material alteration in the facts specified in any Rental Application Survey Report, or should the use of the Equipment change, we shall be entitled to increase the rentals payable under this Agreement in accordance with clause 4.4 herein.
8.10 You shall not in any circumstances or for any reason to be entitled to make any deduction or withhold any sum due under the Agreement by way of set-off or cross-claim or otherwise
8.11 If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Agreement, and the remainder of the provisions in question, shall not be affected, and shall remain in full force and effect.
8.12 You agree that these Terms and Conditions shall apply to the exclusion of any other provision contained in any other document and we may change or vary these Terms and Conditions at any time and without notice to you.
8.13 All descriptions, specifications, drawings and particulars of weights and dimensions submitted or otherwise contained in our catalogues, brochures, price lists and other published matter, are approximate only and none of these form part of the Agreement or give rise to any independent or collateral liability upon us, being intended merely to present a general idea of the Equipment.
9.0 LAW AND JURISDICTION
9.1 The Agreement shall be governed by and constructed in accordance with English law and we all agree to submit to the jurisdiction of the English Courts.