

STANDARD TERMS AND CONDITIONS OF HIRE - AMENDED

1.0 DEFINITIONS

- 1.1 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.
- 1.2 The company firm or person taking the owner's equipment on hire is hereinafter referred to as **you** and this expression includes their successors.
- 1.3 **Equipment** shall include any machine or part thereof and any attachments or fittings or replacements or any other item hired under this Agreement.

2.0 LETTING

2.1 Duration of Letting

- 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 unless notice is given in accordance with **clause 6** of this Agreement save that the maximum aggregate period of hire shall not exceed **Five years**. 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 Minimum Period of Hire (hereinafter referred to as **MPH**) stated and thereafter until terminated by either party giving **seven** days written notice to the other (to expire no earlier than the last day of the **MPH**).
- 2.1.2 In the event that you are an unincorporated body and your entry into the Agreement is governed by the Consumer Credit Act 1974, then the hiring under the Agreement shall be for the Minimum Period of Hire and you are not required to give notice to terminate the hiring.

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 (fair wear and tear excepted) 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 safe-keeping of the Equipment, and its return to us in a condition equal to that in which it was delivered to you. 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 or alter the Equipment except with prior written agreement from us and at your expense, but if under any statutory enactment the Equipment has to be modified, 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 specified in the Agreement 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

- 2.7.1 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.
- 2.7.2 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.
- 2.7.3 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 fully insure with such insurers in respect of all your 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 indemnify us against all loss 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 against all loss, damages, costs and expenses 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 of any loss of or material damage to the Equipment.

Return of Plant

- 2.10 Keep the Equipment free of all liens 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 **thirty** 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).

Limits of Liability

- 3.2 We will at your request and cost and on our terms transfer to you, as far as possible, the benefits of any manufacturer's and supplier's express warranties of fitness and performance of the Equipment given to us.
- 3.2.1 Except as stated in sub-clause 3.2.2 below, if you acknowledge that you have selected the Equipment from a supplier and have reviewed the supplier's terms and conditions of sale which are acceptable and satisfactory to you and which permit (pursuant to the Contracts (Rights of Third Parties) Act 1999) you to exercise rights against the supplier in respect of the Equipment, we shall have no liability whatsoever to you in respect of the state, condition, fitness for purpose or satisfactory quality of the Equipment and that you shall exclusively pursue all claims relating to the same against the said supplier.
- 3.2.2 If in making this agreement you deal as a consumer or if in Scotland this agreement is a consumer contract (within the meanings of Sections 12 and 25 of the Unfair Contract Terms Act 1977) but not otherwise, the Equipment is hired to you with the benefit of terms as to title, correspondence with description, fitness for purpose and merchantable and/or satisfactory quality implied by the Supply of Goods and Services Act 1982 (as amended).

3.2.3

- (a) The following provisions set out our entire liability, including any liability for the acts or omission of our employees, agents and sub-contractors to you in respect of:
- Any breach of our contractual obligations arising under the Agreement; and
 - Any representations, statement or tortious act or omission including negligence arising under or in connection with the Agreement
- (b) 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.
- (c) 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.
- (d) Except in respect of injury to or death of any person resulting from our negligence, any liability under sub-clauses 3.2.3(a), (b) and (c) above, in respect of each event, shall not in aggregate exceed the amount(s) payable by you under the Agreement or £10,000 of any proven loss, whichever shall be the lesser amount.
- (e) If a number of events of default give rise essentially to the same loss then these shall be regarded as giving rise to only one claim under the agreement.

- 3.2.4 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.

4.0 FULL MAINTENANCE

- 4.1 We will, subject to clause 4.2, at our expense:-

- 4.1.1 Carry out the routine servicing and inspection of the Equipment at such intervals as we may reasonably decide including the adjustment or replacement of any defective working parts where caused by standard operating fair wear and tear discovered during such maintenance or service work;
- 4.1.2 Repair or replace any parts (other than consumables such as but not limited to light bulbs, wiper blades, tyres and forks), except where in our reasonable opinion the part has been worn or damaged due to your failing to take reasonable care of the Equipment. Our decision shall be conclusive and binding to you and in this event, the cost of the repair will be charged to you.
- 4.1.3 Use all reasonable endeavours to supply spare/replacement components (other than consumables) required to maintain the Equipment, using such components (whether service exchange parts or new parts) as we consider necessary.
- 4.1.4 Undertake maintenance during normal working hours of **eight** to **five** Monday to Friday other than Bank Holidays and Public Holidays. Work requested outside these hours will be charged at our then prevailing rates.