



**Terms and Conditions**

Under this agreement the Company agrees to let and the Customer agrees to rent the Equipment on the terms and conditions set out below and overleaf

**1 Definitions**

- “Company” means Ashtead Technology Limited
- “Customer” means the company, firm, person or public authority shown overleaf
- “Equipment” means the various items of equipment listed overleaf which are the subject of this agreement
- “Operator” means an employee of the Company supplied under the terms of this agreement to operate the Equipment on behalf of the Customer
- “Rental Charges” means the rental charges detailed overleaf
- “Rental Period” means the period defined in clause 3.1 hereof.
- “Replacement Value” means the manufacturer’s current list price (including the costs of any modifications) from time to time together with all associated costs including but not limited to the costs of transportation, tax and licences.

**2 Interpretation**

- 2.1 The masculine includes the feminine and the neuter and vice versa.
- 2.2 The singular includes the plural and vice versa.
- 2.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as reference to the statute, enactment, order regulation or instrument as amended from time to time by any subsequent re-enactment, order, regulation or instrument or contained in any subsequent re-enactment or consolidation hereof.

Headings are included in this agreement for ease of reference only and shall not affect the interpretation or construction of any of the terms and conditions herein.

**3. Period of Rental**

- 3.1 The Rental Period commences upon the day the Equipment is despatched by the Company or collected by or on behalf of the Customer from the Company’s premises or such other premises as specified by the Company and shall continue until the Equipment is returned thereto between the hours of 8.30a.m and 5.00p.m Mondays to Fridays and a receipt is issued by the Company or is collected by the Company, this shall apply even if the Company has agreed to cease Rental Charges.
- 3.2 Where the Equipment is lost during the Rental Period or is returned or collected other than in good repair, full working order and/or damaged the period of rental shall continue for such period as is reasonably necessary for the Equipment to be repaired, restored to full working order or replaced or the Replacement Value is received by the Company whichever is the earlier.



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3.3 If the Customer is an individual within the meaning of the Consumer Credit Act 1974 the maximum Rental Period shall not exceed three months.

**4 Rental and other Charges**

4.1 Rental Charges will be calculated daily with part days being charged as full days.

4.2 All Rental Charges are quoted in pounds sterling, unless otherwise stated.

4.3 Rental Charges relate solely to the rental of the Equipment and additional charges will be paid by the Customer for installation and transportation of the Equipment where this is undertaken by or on behalf of the Company. Where applicable, these additional charges are detailed overleaf.

4.4 Where the Equipment is returned or collected and is found not to be in substantially the same condition (fair wear and tear being excluded) that it was at the time of delivery then the Customer shall be responsible for the costs of the Company returning the Equipment to its condition at the time of delivery plus an administration charge of fifteen per cent (15%). Where the Equipment is incapable of being restored to its previous condition, the Customer shall be responsible for the full cost of replacement.

4.5 Where the Equipment is lost during the Rental Period the Customer shall pay to the Company on demand the full replacement cost of the Equipment.

4.6 Where applicable the Customer shall be responsible for payment of the Operator charges specified overleaf.

4.7 The Customer agrees to pay all costs (including export and import costs); taxes (including withholding tax), levies, and duties assessed by any foreign government or body against the Equipment and associated apparatus in connection with temporary importation and/or exportation of the same.

4.8 The Customer agrees to pay all taxes, levies, or duties assessed by any foreign government in respect of the salary and other payments made by the Company to any Operator and the Customer shall indemnify the Company against any such taxes, levies, or duties.

4.9 The Customer shall obtain and pay for all and any permits, licences and other consents and permissions required to enable the Equipment and the Operator to perform the work required by the Customer.

4.10 The Customer agrees to pay all charges arising under clauses 14.5, 14.6 and 14.10.

**5 Payment Terms**

5.1 Subject to the provisions of clauses 5.2, 5.3 and 5.4 invoices for Rental and other charges will be issued at the end of each calendar month and/or at the expiration of the Rental Period. Invoices are payable by the Customer within thirty days of the invoice date.

5.2 Where the Customer undertakes payment via credit card, invoices for Rental and other charges will be issued and charged to the credit card at the end of each week.

5.3 The Company reserves the right to charge a deposit of an amount to be determined by the Company that will be retained by the Company.

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- 5.4 The Customer acknowledges that the Company may deduct all Rental and other charges from the deposit
- 5.5 The balance of deposit if any shall be returned to the Customer within 21 days of the return of the Equipment.
- 5.6 The Company reserves the right to charge interest on any outstanding amounts at the rate of 2% above the base rate for the time being of HSBC both before and after any judgment.
- 5.7 In respect of payments by the Customer time shall be of the essence of this agreement.

**6. Warranties**

- 6.1 The Company warrants that at the time the Equipment is collected or delivered it will substantially perform the functions specified in the manufacturer's specification.

Any description, illustration, specification, drawing and material contained in any catalogue, price list, brochures, leaflets and other descriptive matters of the Company represent the general nature of the Equipment described therein but do not form part of this agreement.

- 6.2 The Customer warrants the collection or delivery of the Equipment is conclusive proof that he has examined the Equipment and found it to be in good condition and in accordance with the manufacturer's specification.
- 6.3 The Company will undertake commercially reasonable efforts to promptly provide replacements or corrections to any part of the Equipment that does not substantially perform the functions specified in the manufacturer's specification where such failure is identified by the Customer upon collection or delivery and is notified to the Company immediately.
- 6.4 The Company warrants that it will undertake commercially reasonable efforts to deliver the Equipment upon the agreed delivery date
- 6.5 The Company warrants it has the right to Rent the Equipment.
- 6.6 The warranties stated above are limited warranties and are the only warranties made by the Company. The Company does not make, and the Customer hereby expressly waives, all other warranties of merchantability and fitness for a particular purpose. The stated express warranties are in lieu of all liabilities or obligations of the Company for damages arising out of or in connection with the delivery, use or performance of the Equipment.

**7 Limitation of Liability**

- 7.1 The Company shall indemnify the Customer against injury or death of any person without limit caused by the negligence breach of statutory duty or wilful misconduct of its employees.
- 7.2 For the avoidance of doubt clause 7.1 shall not apply where the Company's employee is acting upon the instruction of the Customer.
- 7.3 The Company shall have no liability with respect to its obligations under this agreement for loss of use, profit or goodwill, or for special, indirect, consequential, or incidental damages, whether in tort or in contract, even if it has been advised of the possibility of such damages. In any event, the liability of the Company to the Customer for any reason and upon any cause of action whatsoever shall be limited to the amount of any Rental

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Charges which the Customer has paid to the Company under this agreement. Providing that nothing in this clause shall operate so as: -

- (a) to exclude the application of Section 12 of the Sale of Goods Act 1979 as amended by the Sale of Goods Act 1994: or
- (b) to exclude liability for fraudulent misrepresentation

7.4 The Customer acknowledges and agrees that the allocation of risk contained in this clause 7 is reflected in the Rental Charges

**8 Title**

Nothing in this agreement shall convey to the Customer any title to or any right in the Equipment including but not limited to all proprietary rights or ownership of any modifications. The Customer's sole right in relation to the Equipment or any modifications is to use the same for the duration of the Rental Period under the terms and conditions herein contained.

**9 Indemnity**

The Customer shall hold the Company and the Company's servants and agents fully indemnified from and against all claims made or actions brought against the Company in respect of any liability, claim, loss (including loss of business or other consequential loss), damage or injury to persons or property occurring in connection with the Customer's use of the Equipment.

**10 Obligations of the Customer**

The Customer shall:

for the Rental Period obtain all prudent insurance cover, including third party liability and cover against loss or damage to the Equipment for its full Replacement Value. Furthermore the Customer shall give the Company immediate written notice of any loss or damage to the Equipment and shall in the event of loss reimburse the Company at the then manufacturer's list price in respect thereof within 14 days of the loss. The Customer shall produce on demand to the Company a copy of the policy or policies. The Customer shall hold on trust for the Company all policy proceeds in or towards satisfaction of the Customer's obligations hereunder;

maintain effective control of the equipment and maintain the equipment in a secure location when not in use;

ensure that the Equipment is located at the delivery address (or vessel) stated in the Customer's order or such other address as may be agreed between the parties in writing;

ensure that the Equipment will only be operated by competent persons in accordance with the manufacturer's recommendations and where appropriate with valid calibration and/or certification for the duration of the Rental Period;

at the Customers expense arrange that the Equipment is kept in good repair and condition and maintain and effect all necessary repairs in accordance with the

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manufacturer's specification including making good any loss or damage to the Equipment due to any occurrence whatsoever (fair wear and tear only excepted);

ensure that at the Customer's expense, the Equipment is kept safe and without risks to health;

ensure that its use of the said Equipment conforms with the terms and conditions laid down in the Health and Safety at Work Act 1974 and in particular, sections 2(2)(b) and (2)(c) thereof and to any other national and local Health and Safety Regulations which may apply until the Equipment is collected or returned;

obtain all necessary licences, certificates, permits, authorisations required for the operation of, or in connection with, the Equipment and shall maintain the same in full force until the Equipment is collected or returned;

immediately notify the Company by telephone and subsequently confirm in writing if the Equipment is involved in any accident resulting in injury to persons or damage to property. The Customer shall not admit liability or compromise any claim relating to the Equipment without the consent of the Company in writing:

not do or fail to do, any act whereby the Equipment or its use would contravene any statute, rule, regulation, or bylaw or any such licence, certificate, permit authorisation for the time being in force pertaining to the possession use, maintenance or safety of the Equipment;

not assign, sell, mortgage, pledge, let on hire or rental, part with possession, or otherwise deal with the Equipment or with any interest therein, or attempt to do any of these things;

not assign this agreement without specific written consent by the Company and not permit the Equipment to be used by any other party than the Customer and its employee;

pay all invoices in accordance with clause 5 hereof.

**11 Inspection**

The Customer shall permit and grant the Company the right and facilities to enter upon the delivery address at all reasonable times in order to inspect the Equipment.

**12 Termination**

Upon the termination of this agreement all rights in and to the Equipment shall automatically revert to the Company. The Company shall have the right to enter any premises to take immediate possession of the Equipment without further notice or demand.

Either party may terminate this agreement in the event of a material default by either party that is not cured within the applicable cure period specified in this agreement, or a reasonable cure period (with the minimum being ten (10) day if no other cure period is stated) from receipt of written notice specifying the nature of the default with reasonable particularity.



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If an order is made or an effective resolution passed for the winding-up of either party otherwise than for the purpose of re-construction or amalgamation either party may give written notice declaring this agreement is terminated.

If one party commits an act of bankruptcy the other party may give written notice declaring this agreement is terminated.

Where the Customer is an individual within the meaning of the Consumer Credit Act 1974 this agreement will terminate at the expiration of three months from the date of execution and the Customer shall be required to return the Equipment.

Exercise of the right of termination afforded to either party shall not prejudice legal rights or remedies either party may have against the other in respect of any breach of the terms of this agreement.

The Customer's failure to pay on a timely basis is cause for termination by the Company of this agreement.

**13 Force Majeure**

13.1 Neither party shall be liable for any delay or failure to perform its obligations if such failure or delay is due to Force Majeure.

13.2 For the purpose of this agreement, "Force Majeure" shall mean any act, omission, cause or circumstance beyond the reasonable control of the Company and shall include but not limited to war, rebellion, civil commotion, strikes, lock-outs and industrial disputes, fires, explosion, earthquake, act of God, flood, drought, or other act or order of any government department, council or other constituted body.

**14 Company Supplied Operators**

Where the Company supplies an Operator, the Customer:

14.1.1 shall provide all necessary power sources and other support equipment necessary to enable the Equipment to be operated satisfactory.

14.1.2 acknowledges that the work intended to be carried out by the Customer is the sole responsibility of the Customer.

14.1.3 shall provide reasonable sleeping and living accommodation and food for the operator.

14.1.4 will provide an appropriate operating environment for the Equipment in accordance with the manufacturers recommendations.

14.2 The Company shall have the right from time to time to substitute both Equipment and/or the Operator upon giving reasonable notice to the Customer and the Customer shall co-operate with and assist the Company in effecting such substitutions.

14.3 In the event that the proposed work takes more than ten working days (or such other period as shall have been agreed by the Company in writing) the Customer shall pay for the cost of replacing the Operator together with an administration charge of 15% of the

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costs ("the Substitution Costs"). The Substitution Costs shall include airfares and other travel costs to and from the Company's offices together with subsistence and all other reasonable expenses.

- 14.4 The Company shall be responsible for the payment of the salaries and all UK social security and other payments and taxes in respect of the Operator whilst engaged in work under this agreement.
- 14.5 In so far as practicable the Operator will service and repair the Equipment on the Customer's site. Any servicing or repair of the Equipment requiring return of any vessel to port or return of any Equipment to the Company's premises will be made known as soon as possible to the Customer's designated representative. The costs of returning the Equipment will be borne by the Customer.
- 14.6 Where it is agreed between the parties that an engineer designated by the Company should visit the Customer's site to repair the Equipment, the Customer shall be responsible for payment of the engineer's charges together with all travel costs, subsistence and related expenses
- 14.7 Transit time including any delays to and from port or to and from the Company's premises after discovery of a malfunction will not constitute cause for reduction in payments to the Company.
- 14.8 All work undertaken shall be under the direction of the Customer but the actual operation of the Equipment and the manner of performance of work in connection therewith shall be under the direction and control of the Company. It being hereby agreed that the Company is an independent contractor and is not for the purposes of this agreement acting as an agent of the Customer. The Operator shall not be under the direction or control of the Customer, nevertheless, The Operator will co-operate with the Customer's personnel with a view to operating the Equipment in accordance with their reasonable requirements. Employees of the Customer shall not be under the direction and control of the Company or its operators.
- 14.9 The Company and its Operators shall not be involved in nor be required nor requested to be nor become involved in the operation of any vessel or any other equipment other than the Equipment for any reason whatsoever.
- 14.10 Mobilisation and demobilisation expenses including operators air fares and other travel costs, subsistence and hotel charges, freight charges and all other reasonable expenses associated with the mobilisation and demobilisation of the Company's personnel and Equipment will be charged to the Customer at cost plus an administration charge of 15 per cent.
- 14.11 Periods during which the Equipment is being repaired or maintained will not constitute cause for reduction in payments to the Company.

**15 Invalidity of any Provision**

In the event of one or more of these terms and conditions or any part thereof being invalid, illegal or unenforceable in any respect the validity, legality, or unenforceability of the remaining terms and conditions shall not in any way be affected or impaired.

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- 16.1 This agreement constitutes the complete and exclusive statement of the agreement between the parties as to the subject matter hereof and supersedes all previous agreements with respect thereto.
- 16.2 Each party hereby acknowledges that it has not entered into this agreement in reliance upon any representation made by the other party but not embodied herein.

**17 Notices**

Any notice required to be given hereunder, shall be given by sending the same:

- (a) by first class post to the addresses as first set out overleaf or to any subsequent address designated by either party for the purpose of receiving notice pursuant to this agreement, and any notice so sent shall be deemed to have been given three (3) business days after the same was mailed; or
- (b) by confirmed facsimile; or
- (c) by e-mail.

**18 General Terms**

- 18.1 The failure of either of the parties to insist upon strict performance of any of the provisions of this agreement shall not be construed as the waiver of any subsequent default of a similar nature.
- 18.2 The rights and obligations under Clauses 7 and 9 shall survive the termination of this agreement for any reason whatsoever.
- 18.3 Where the Customer deals as a consumer as defined by the Consumer Credit Act 1974 these conditions do not and will not affect his statutory rights.

**19 Law**

The Law of Scotland shall govern the construction, validity and performance of these conditions in all respects. The Customer hereby submits to the non-exclusive jurisdiction of the Scottish Courts.