



Terms and Conditions

Under this agreement the Company agrees to let or sell and the Customer agrees to rent or buy the Equipment in accordance with the Contract (which incorporates the terms and conditions set out in this document)

In respect of Hire – parts A and C of these terms and conditions apply.

In respect of Sale – parts B and C of these terms and conditions apply.

Definitions and Interpretation

In these terms and conditions the following words and expressions shall have the following meanings:

- "Affiliate"** means subsidiary or holding company of any company or any other subsidiary **of such a holding company (the terms "subsidiary" and "holding company"** having the meanings assigned under Section 1159, Companies Act 2006);
- "Company"** means Ashtead Technology Limited a company registered in Scotland registered number SC091624;
- "Company Group"** means the Company, its Affiliates, its and their respective officers and employees (including agency personnel);
- "Contract"** means the contract between the parties for the hire or sale of the Equipment, evidenced by a quotation of the Company or an order of the Customer and acceptance by the Company or Customer as the case may be and including these terms and conditions;
- "Customer"** means the legal person or public authority who is hiring or purchasing the Equipment pursuant to the Contract;
- "Customer Group"** means the Customer, its Subcontractors, its and their Affiliates, its and their respective officers and employees (including agency personnel), but shall not include any member of the Company Group;
- "Equipment"** means the equipment hired or sold by the Company to the Customer under the Contract;
- "Hire"** means the rental of the Equipment by the Customer from the Company under the Contract;
- "New Equipment"** means Equipment which has not previously been used other than in testing;
- "Operator"** means an employee of the Company supplied under the terms of the Contract to operate the Equipment on behalf of the Customer;
- "Rental Charges"** means the charges defined under clause 2 of Part A hereof;
- "Rental Period"** means the period defined in clause 1.1 of Part A hereof;
- "Replacement Value"** means the manufacturer's list price for the time being applicable (including the costs of any modifications), or if none such exists, the list price of that piece of equipment which most closely matches, together with all associated costs including but not limited to the costs of transportation, tax and licences;



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"Sale" means the purchase of the Equipment by the Customer from the Company under the Contract ;

"Second-hand Equipment" means Equipment which is other than New Equipment; and

"Subcontractor" means any party (other than a member of the Company Group) who is a party to a contract with the Customer for the provisions of goods or services to the Customer.

The masculine includes the feminine and the neuter and vice versa.

The singular includes the plural and vice versa.

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 it is in force for the time being taking account of any amendment, extension, application, consolidation or re-enactment and includes any subordinate legislation for the time being in force under it.

Condition headings are included in these terms and conditions for ease of reference only and shall not affect the interpretation or construction of any of the terms and conditions herein.

Part A. Hire of Equipment

1 Period of Rental

1.1 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; the foregoing shall apply even if the Company has agreed to cease Rental Charges.

1.2 Where the Equipment is lost during the Rental Period or is returned or collected other than in good repair and full working order and/or is damaged the period of rental shall continue for such period as is necessary in the circumstances for the Equipment to be repaired, restored to full working order or replaced (as considered necessary by the Company, acting reasonably) or the Replacement Value is received by the Company whichever is the earlier.

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

2 Rental and other Charges

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

2.2 All Rental Charges are quoted in pounds sterling, unless otherwise expressly stated in writing.

2.3 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



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undertaken by or on behalf of the Company. Where applicable, these additional charges are detailed in the Contract.

- 2.4 Where the Equipment is returned or collected and is found not to be in 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, including any necessary cleaning, disinfecting and like charges, plus an administration charge of fifteen per cent (15%) of such costs. Where the Equipment is incapable of being restored to its previous condition, the Customer shall be responsible for, and shall pay on demand, the cost of replacement (on a full indemnity basis).
- 2.5 Where the Equipment is lost during the Rental Period the Customer shall pay to the Company on demand the full cost of replacement (on a full indemnity basis).
- 2.6 Where applicable the Customer shall be responsible for payment of the Operator charges specified in clause 8 of Part A.
- 2.7 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 and the Customer shall indemnify the Company Group from and against any such costs, taxes, levies and duties.
- 2.8 The Customer agrees to pay all costs, taxes, levies, or duties assessed by any foreign government in respect of the salary and other payments made by the Company Group to any Operator and the Customer shall indemnify the Company Group from and against any such costs, taxes, levies, or duties.
- 2.9 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 and shall indemnify the Company Group and the Operator from and against any claims, losses or damages suffered by them arising from a failure to obtain the same.
- 2.10 **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 recharged to the Customer at cost plus an administration charge of 15 per cent.**
- 2.11 The Customer agrees to pay all charges arising under clauses 8.5 and 8.6 of Part A.

3 Payment Terms - Hire

- 3.1 Subject to the provisions of clause 1 of Part C, 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.



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3.2 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.

4. Warranties

4.1 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 Contract.

4.3 The Company warrants it has the right to rent the Equipment to the Customer.

4.4 The warranties stated above are the only warranties made by the Company in respect of the Hire of the Equipment. The Company does not make, and the Customer hereby expressly waives, all other warranties of merchantability and fitness for a particular purpose to the fullest extent permitted by law.

5 Title

5.1 Nothing in the Contract 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 possess and use the same in accordance with the terms and conditions herein contained.

5.2 Upon the termination of the Contract all rights in and to the Equipment shall automatically revert to the Company. The Company shall have the right to enter any premises (including any vessel whether at sea or at port) to take immediate possession of the Equipment without further notice or demand.

6 Obligations of the Customer

Without prejudice to the obligations expressed in other clauses of these terms and conditions, during the continuance of the Contract the Customer shall:

6.1 arrange and maintain at its expense all prudent insurance cover, including but not limited to third party liability and cover against loss or damage to the Equipment for its full Replacement Value and:

(a) such insurance shall commence from the time and date of delivery for the period of hire up to and including the date when the Equipment is delivered back to and received by the Company and acknowledged by it in writing;

(b) the Customer shall produce on demand to the Company a copy of the policy or policies;

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- (c) the Customer shall hold on trust for the Company all policy proceeds in or **towards satisfaction of the Customer's obligations hereunder;**
- 6.2 give the Company immediate written notice of any loss, damage or claim relating to the Equipment and shall on demand reimburse the Company in respect thereof in accordance with clause 2 of Part A;
- 6.3 ensure that the Equipment is located at the delivery address (or vessel) stated in the Contract or such other address as may be expressly agreed between the parties in writing;
- 6.4 maintain effective control of the equipment and maintain the equipment in a secure location when not in use;
- 6.5 ensure that the Equipment will only be operated in a proper manner by persons competent to operate said Equipment in accordance with the manufacturer's recommendations and where appropriate with valid calibration and/or certification for the duration of the Rental Period;
- 6.6 at the Customers expense arrange that the Equipment is kept in good repair and condition, undertake routine maintenance and maintain and effect all necessary repairs in **accordance with the manufacturer's specification including making good any loss or damage to the Equipment due to any occurrence whatsoever (fair wear and tear only excepted);**
- 6.7 permit the Company, or an authorised representative of the Company, on reasonable notice to inspect and/or repair the Equipment;
- 6.8 **preserve on the Equipment any of the Company's or any manufacturer's identification number or mark or any nameplate that is or should be upon the Equipment;**
- 6.9 **ensure that at the Customer's expense, the Equipment is kept safe and without risks to health;**
- 6.10 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 European, national and local Health and Safety Regulations which may be applicable until the Equipment is collected or returned;
- 6.11 obtain at the Customers expense 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 in accordance with clause 1.1 of Part A;
- 6.12 punctually pay all duties concerning the Equipment;
- 6.13 not by any act or default render the Equipment liable to any distress, execution or other legal process;
- 6.14 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 prior express consent of the Company in writing;

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- 6.15 not do or fail to do, any act whereby the Equipment or its use would as a result contravene any statute, rule, regulation, or byelaw or any such licence, certificate, permit authorisation for the time being in force pertaining to the possession use, maintenance or safety of the Equipment;
- 6.16 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 the foregoing;
- 6.17 not assign the Contract without the express prior written consent of the Company;
- 6.18 not permit the Equipment to be used by any other party than the Customer and its employees without the express prior written consent of the Company;
- 6.19 indemnify the Company Group from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities incurred in any way by reason of the **Customer's breach of any of these terms and conditions including but not limited to all** such costs, expenses and liabilities incurred in ascertaining the location of the Equipment and uplifting the Equipment therefrom;
- 6.20 procure that by the terms of any mortgage, charge or debenture of or in respect of its assets or any premises or vessel in which the Equipment may be installed or stored no rights whether present, future or contingent may be created or become exercisable in respect of the Equipment. The Customer acknowledges the right on the part of the Company to notify any mortgagee or chargee from time to time of the Equipment and of such of these terms and conditions as the Company shall consider appropriate;
- 6.21 pay all invoices in accordance with clause 3 of Part A and clause 1 of Part C;
- 6.22 upon expiry of the period of hire, return the Equipment in accordance with these terms and conditions.

7 Inspection

The Customer shall permit and grant an appointed representative of the Company the right and facilities to enter upon the delivery address or such other address at which the Equipment may be located (including but not limited to business premises and vessels) at **all reasonable times in order to inspect, maintain, repair, test and, where the Customer's right to possession has terminated, recover, the Equipment.**

8 Company Supplied Operators

- 8.1 Where the Company supplies an Operator, the Customer:
- 8.1.1 shall provide at its own cost all necessary power sources and other support equipment necessary to enable the Equipment to be operated in a safe and satisfactory manner;
- 8.1.2 acknowledges that the work intended to be carried out by the Customer shall remain the sole responsibility of the Customer;
- 8.1.3 shall provide at its own cost reasonable sleeping and living accommodation and food for the Operator;



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- 8.1.4 shall provide at its own cost an appropriate operating environment for the Equipment in accordance with the manufacturers recommendations and any applicable laws or regulations.
- 8.2 The Company shall have the right at its sole discretion 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.
- 8.3 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 **costs of doing the same ("the Substitution Costs")**. **The Substitution Costs shall without limitation include airfares and other travel costs to and from the Company's offices together with subsistence and all other reasonable expenses.**
- 8.4 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 the Contract.
- 8.5 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 is reasonably practicable to the Customer's designated representative**. The costs of returning the Equipment will be borne by the Customer who shall reimburse the Company on a full indemnity basis.
- 8.6 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, and as such shall reimburse the Company on a full indemnity basis for, payment of the **engineer's charges together with all travel costs, subsistence and related expenses**.
- 8.7 Transit time including without limitation any delays to and from port or to and from the **Company's premises after discovery of a malfunction will be classed as Consequential Loss** and not constitute cause for reduction in payments to the Company.
- 8.8 All work undertaken by the Operator 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. That the Company is an independent contractor and is not for the purposes of the Contract 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.
- 8.9 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.
- 8.10 Periods during which the Equipment is being repaired or maintained will not constitute cause for reduction in payments to the Company.

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- 1.1 Each order or acceptance of a quotation for Equipment purchase by the Customer from the Company shall be deemed to be an offer by the Customer to buy Equipment subject to these terms and conditions.
- 1.2 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Equipment to the Customer.

2 Description

- 2.1 **The quantity and description of the Equipment shall be as set out in the Company's quotation or acknowledgement of order.**
- 2.2 All samples, drawings, descriptive matter, specifications and advertising issued by the **Company and any descriptions or illustrations contained in the Company's catalogues or brochures** are issued or published for the sole purpose of giving an approximate idea of the Equipment described in them and shall not form part of the Contract.

3 Price

- 3.1 Unless otherwise agreed by the Company in writing, the price for the Equipment shall be **the price set out in the Company's price list published on the date of delivery or deemed delivery.**
- 3.2 The price for the Equipment shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Equipment.
- 3.3 All sale prices are quoted in pounds sterling, unless otherwise expressly stated in writing.

4 Retention of Title

- 4.1 The Equipment is at the risk of the Customer from the time of delivery.
- 4.2 The terms of this clause 4.2 apply until the whole sale price of Equipment has been paid to the Company. Ownership and title to the Equipment shall remain with the Company and shall not pass to the Customer until the whole sale price has been paid to the Company notwithstanding delivery of the Equipment to the Customer or to any independent carrier or any other third party.
- 4.3 Until ownership of the Equipment has passed to the Customer (in accordance with clause 4.2 above), the Customer shall:
- (a) store the Equipment (at no cost to the Company) separately from all other goods of the Customer or any other third party in such a way that they remain **readily identifiable as the Company's property;**

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- (b) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- (c) maintain the Equipment in satisfactory condition and keep it insured on the **Company's behalf for its full price against all risks to the reasonable satisfaction** of the Company. On request the Customer shall produce the policy of insurance to the Company.

4.4 **The Customer's right to possession of the Equipment shall terminate immediately if the terms of clause 4.2 of this Part B apply and:**

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purposes only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- (c) the Customer encumbers or in any way charges any of the Equipment.

4.5 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to **inspect it, or, where the Customer's right to possession has** terminated, to recover it.

4.6 **On termination of the Contract, howsoever caused, the Company's rights contained in this clause 4 shall remain in effect.**

5 Warranties

5.1 The Company warrants it has the right to sell the Equipment to the Customer.

5.2 Subject to the following provisions of this clause 5 of Part B and clause 3 of Part C, the Company gives no warranty in respect of the Equipment, whether New Equipment, Second-hand Equipment or Equipment manufactured or modified to a specification. In particular, all warranties, conditions and other terms implied by statute or common law

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(save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

5.3 In relation to New Equipment:

- (a) the Company shall, to the extent it is able, transfer to the Customer the benefit of any warranty or guarantee given to the Company by the manufacturer in respect of the Equipment;
- (b) any claims of the Customer, the Customer Group or any other person in respect **of any breach of the manufacturer's warranty shall be directed to the manufacturer of the Equipment to the exclusion of the Company.**

5.4 In relation to Second-hand Equipment:

- (a) the Company shall, to the extent it is able, transfer to the Customer the benefit of any warranty or guarantee given to the Company by the manufacturer in respect of the Equipment, to the extent that such warranty remains in operation;
- (b) all claims of the Customer, the Customer Group or any other person in respect **of any breach of the manufacturer's warranty shall be directed to the manufacturer of the Equipment to the exclusion of the Company.**

5.5 In relation to Equipment manufactured or modified by the Company in accordance with **the Customer's specification:**

- (a) the sole obligation of the Company is to meet the specification of the Customer;
- (b) the Customer shall be responsible for the specification provided and shall indemnify the Company Group from and against all claims, losses, damages, costs, expenses and liabilities in respect of any failure of the Equipment to perform any function provided it meets the specification;
- (c) the customer shall be responsible for and shall save, indemnify, defend and hold harmless the Company Group from and against all claims, losses, **damages, costs, expenses and liabilities in respect of a breach of a third party's** intellectual property rights which arises from, relates to or is in connection with the use of the specification provided.

Part C. Terms Applicable to both Hire and Sale of Equipment**1 Payment Terms – General**

1.1 The Company reserves the right to charge a deposit of an amount to be determined by **the Company and the Company's obligations under the Contract shall be suspensively** conditional upon timeous receipt of the same.

1.2 The Customer acknowledges that the Company may deduct all Rental, purchase and other charges from the deposit.



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- 1.3 Subject to clause 1.2 of Part C, in the case of Hire the balance of deposit if any shall be returned to the Customer within 21 days of the return of the Equipment.
- 1.4 Invoices are payable by the Customer within thirty days of the invoice date.
- 1.5 Notwithstanding any other provision in these terms and conditions, all payments payable to the Company under the Contract shall become due immediately on its termination.
- 1.6 The customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer had a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 1.7 If the Customer fails to pay to the Company or any member of the Company Group any sum due pursuant to the Contract, the Customer shall be liable to pay interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and compounded every three months until payment is made, all whether before or after any judgement.
- 1.8 No payment shall be deemed to have been received by the Company until the Company has received cleared funds.
- 1.9 In respect of any and all payments due by the Customer time shall be the essence of the Contract.

2 Delivery

- 2.1 Unless otherwise agreed in writing by the Company, delivery of the Equipment shall take **place at the Company's place of business.**
- 2.2 Any dates specified by the Company for delivery of the Equipment are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 2.4 If for any reason the Customer fails to accept delivery of any of the Equipment when it is ready for delivery, or the Company is unable to deliver the Equipment on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
 - (a) risk in the Equipment shall pass to the Customer;
 - (b) the Equipment shall be deemed to have been delivered; and
 - (c) the Company may store the Equipment until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

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- 2.5 The Customer shall provide at the Delivery point and at its expense adequate and appropriate equipment and manual labour for loading the Equipment.
- 2.6 The quantity of any consignment of Equipment as recorded by the Company on despatch **from the Company's place of business shall be conclusive evidence of the quantity** received by the Customer on delivery unless the Customer can provide conclusive evidence providing the contrary.
- 2.7 The Company shall not be liable for any non-delivery of Equipment (even if caused by the **Company's negligence**) unless the Customer gives written notice to the Company of the non-delivery within 7 days of the date when the Equipment would in the ordinary course of events have been received.
- 2.8 Any liability of the Company for non-delivery of the Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such goods.

3 Defects

- 3.1 The Customer shall notify the Company of any defect in the condition of the Equipment or want of specification within 48 hours of the collection or delivery of the Equipment, and failure to do so shall be conclusive proof that it has examined the Equipment and found it to be in good condition and capable of performing its functions in accordance with the manufacturer's specification.
- 3.2 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 and notified to the Company within 48 hours of collection or delivery.

4 Limitation of Liability

- 4.1 Nothing in these terms and conditions excludes or limits the liability of the Company Group:
- (a) for death or personal injury caused by the negligence of any member of the Company Group;
 - (b) for any matter which it would be illegal for the Company Group to exclude or attempt to exclude its liability; or
 - (c) for fraud or fraudulent misrepresentation.
- 4.2 Subject to clauses 5 of Part B for contracts for Sale, clause 4 of Part A for Contracts of Hire and clause 8.1 of Part C for both Sale and Hire contracts:
- (a) save for liability under clause 4.3 of this Part C, the total liability of the Company Group in contract, delict (including negligence or breach of statutory

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duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

- (b) the Customer shall be responsible for and shall indemnify the Company Group from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of (i) personal injury including death or disease of any member of the Customer Group or (ii) loss of or damage to the property of the Customer Group (whether owned, hired, leased or otherwise) which arises from, relates to or is in connection with the performance or non-performance of the Contract irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the Company Group or any other entity or party and this indemnity shall apply irrespective of any claim in delict, under contract or otherwise at law; and
- (c) the Customer shall be responsible for and shall indemnify the Company Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of personal injury including death or disease of, or loss of or damage to the property of, any third party arising from its use of the Equipment to the extent caused by the negligence or breach of duty (whether statutory or otherwise) of the Customer Group. For the purposes of **this clause 4 of Part C "third party" means any party which is not a member of the Company Group or the Customer Group.**

4.3 The Company shall be responsible for and shall indemnify the Customer Group from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of personal injury including death or disease of, or loss of or damage to the property of, any third party arising from the provision of the Equipment to the Customer under this Contract to the extent caused by the negligence or breach of duty (whether statutory or otherwise) of the Company Group.

4.4 The Customer acknowledges and agrees that the allocation of risk contained in this clause 4 of Part C is reflected in the Rental Charges and Sale prices.

5 Consequential Loss

5.1 For the purposes of these terms and conditions the expression "**Consequential Loss**" shall mean:

- (a) consequential or indirect loss under Scots law; and
- (b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (a), and whether or not foreseeable at the date of commencement of the Contract.

Notwithstanding any provision to the contrary elsewhere in the Contract the Company shall save, indemnify, defend and hold harmless the **Customer from the Company Group's own Consequential Loss** and the Customer shall save, indemnify, defend and hold **harmless the Company Group from the Customer Group's own Consequential Loss**, arising from, relating to or in connection with the performance or non-performance of the Contract.

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- 5.2 The indemnities in clause 5.1 of Part C shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in delict, under contract or otherwise at law.

6 Termination

- 6.1 **The Customer's failure to pay any sum due on a timely basis is cause for immediate termination by the Company of the Contract.**

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

- 6.3 The Company may terminate the Contract if :

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purposes only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint and administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- (c) the Customer encumbers or in any way charges any of the Equipment prior to full title having passed in accordance with clause 4.2 of Part B;

each of the foregoing being an "act of bankruptcy".

- 6.4 If the Customer states an intention to commits an act of bankruptcy the Company may give written notice declaring the Contract is terminated.

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6.5 Where the Customer is an individual within the meaning of the Consumer Credit Act 1974 the Contract, where it relates to Hire, will terminate at the expiration of three months from the date of execution.

6.6 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 the Contract.

7 Force Majeure

7.1 The Company shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to Force Majeure.

7.2 **For the purpose of the Contract, "Force Majeure" shall mean any act, omission, cause or circumstance beyond the reasonable control of the Company including, without limitation: acts of God; war or national emergency; rebellion; protests; riot; civil commotion; strikes, lock-outs and industrial disputes (whether or not relating to either party's workforce); fire; explosion; earthquake; flood; drought; epidemic; acts of terrorism or other act or order of any government department, council or other constituted body.**

8 Invalidity of any Provision

In the event of one or more of these terms and conditions or any part thereof being or becoming invalid, illegal or unenforceable in any respect, it shall to the extent of such invalidity, illegality, or unenforceability be deemed severable and the remaining terms and conditions and the remainder of such provision shall not in any way be affected or impaired and shall continue in full force and effect.

9 Entire Agreement

9.1 The Contract 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.

9.2 Each party hereby acknowledges that it has not entered into the Contract in reliance upon any representation made by the other party but not embodied in the Contract.

10 Notices

Any notice required to be given hereunder, shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may have from time to time been notified for this purpose. Notice shall be deemed to have been received:

- (a) If sent by pre-paid by first class post, three days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) If delivered by hand, on the day of delivery; or
- (c) If sent by facsimile on a working day prior to 4.00pm, at the time of confirmed transmission and otherwise on the next working day GMT; or

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- (d) If sent by e-mail at the time of express non-automated acknowledgement that the email has been read by the intended recipient.

11 General Terms

- 11.1 Save where expressly provided herein to the contrary, the failure or delay of either of the parties to insist upon strict performance of any of the provisions of the Contract shall not be construed as a waiver of its rights under the Contract.
- 11.2 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall only be valid if in writing and shall not be deemed a waiver of any subsequent breach or default whether of a similar nature or otherwise and shall in no way affect the other terms of the Contract.
- 11.3 For the avoidance of doubt, the rights and obligations under Clauses 4 and 5 of Part C shall survive the termination of the Contract for any reason whatsoever.
- 11.4 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.
- 11.5 Subject to clause 11.6 of Part C, the parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of any statute or statutory instrument by any person that is not a party to it.
- 11.6 Subject to the remaining provisions of the Contract clauses 4.2, 4.3 and 5.1 of Part C and clause 6.18 of Part A in relation to Contracts of Hire shall be enforceable by any member of the Company Group and the Customer Group.
- 11.7 Notwithstanding clause 11.6 of this Part C, the Contract may be rescinded, amended or varied by the parties to it without notice or consent of any third party even if, as a result, the rights of that third party are adversely affected.
- 11.8 The Company may assign the Contract or any part thereof to any person, firm or company.

12 Law

The Law of Scotland shall govern the construction, validity and performance of these conditions in all respects. The Customer hereby submits to the exclusive jurisdiction of the Scottish Courts and in particular the Court of Session and the Sheriff Court of Grampian Highland and Islands.