

SECTION 1: HOW THESE TERMS AND CONDITIONS WORK

Capitalised terms used in this Section 1 have the meaning given to them Section 2 (Definitions and Interpretation).

These terms and conditions apply to:

- the sale of Units or and the supply of Services to any person or body corporate buying goods or services wholly or mainly for use in connection with their trade, business, craft or profession, even if they are an individual; and
- hires of Units to limited companies, limited liability partnerships, other incorporated entities, partnerships with 3 or more partners or partnerships or unincorporated associations with corporate partners/members only for business purposes, (together "**Business Customers**").

Please note that a different set of terms of conditions from these apply to customers that are not Business Customers ("**Consumers**"). Please ensure you read the correct terms and conditions, depending on whether you are a Business Customer or a Consumer. If you are a Consumer, please ask to see our terms and conditions for Consumers. If you are in any doubt as to whether you are a Business Customer or a Consumer, please contact us so that this can be clarified.

Please note that we may change our terms and conditions from time to time, and that (save where agreed otherwise in writing) the current version (as found on our website at <https://www.clevelandcontainers.co.uk/>) at the time that the Contract is entered into will be applicable and binding to our agreement with you. If you are reading a downloaded or printed copy (etc.) of these terms and conditions then, again save where agreed otherwise in writing, they will not be applicable to any new agreement with us if they have been superseded by a later version.

The Sections of these terms and conditions that apply depend on whether Units are being hired (including under hire purchase agreements) or purchased by the Customer, and whether any Services are being provided.

- Section 2 (Definitions and interpretation) applies to Hire Contracts, Hire Purchase Contracts, Sale Contracts and Services Contracts.
- Section 3 (Terms of Hire) applies to Hire Contracts and Hire Purchase Contracts.
- Section 4 (Terms of Sale – Sale of Units) applies to Sale Contracts only (and please note Units can include goods of any type).
- Section 5 (Terms of Sale – Supply of Services) applies to Services Contracts only.
- Section 6 (General Terms) applies to all agreements (whether Hire Contracts, Hire Purchase Contracts, Sale Contracts and Services Contracts).

If you are in any doubt as to which Sections apply, please contact us so that this can be clarified.

SECTION 2: DEFINITIONS AND INTERPRETATION

1 INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions (as defined below).

1.1 Definitions:

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"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Business Hours"	the period from 8.30 am to 5.00 pm on any Business Day.
"Charges"	the charges for the Services as set out in an Order.
"Commencement Date"	has the meaning given in clause 16.2.
"Conditions"	these terms and conditions.
"Contract"	the contract between the Supplier and the Customer for the hire of Units, hire of Units with an option for the Customer to purchase the Units, sale of Units or supply of Services (as determined by the relevant Order) in accordance with the applicable sections of these Conditions (as identified in Section 1).
"Customer"	the person on whose behalf the Order was submitted and that, once the Order is deemed accepted, has entered into the Contract with the Supplier.
"Customer Materials"	has the meaning given to it in clause 15.4.1.
"Deliverables"	any outputs of the Services supplied by the Supplier to the Customer as part of the Services.
"Delivery Date(s)"	the delivery date(s) for the Units set out in the Order.
"Delivery Location(s)"	the delivery location(s) for the Units set out in the Order.
"Deposit"	the deposit amount set out in the Order.
"Force Majeure Event"	has the meaning given to it in clause 25.
"Hire Contract"	any Contract for the hire of Units, save for and excluding Hire Purchase Contracts.
"Hire Payments"	the payments made by or on behalf of the Customer under a Hire Contract or Hire Purchase Contract for the hire of the Units (and, where applicable, for delivery of the Units) as specified in the relevant Order.

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"Hire Period"	has the meaning given to it in clause 3.1.
"Hire Purchase Contract"	a Contract for the hire of Units which includes an option for the Customer to purchase those Units.
"Information Leaflet"	the leaflet entitled "Important Information. Your Container and Delivery" that may be provided by the Supplier to the Customer and is also found at https://www.clevelandcontainers.co.uk/ .
"Intellectual Property Rights"	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software,

1.2 Rules of interpretation:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to one gender includes a reference to other genders.
- 1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to **writing** or **written** includes email but not fax.
- 1.2.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

SECTION 3: TERMS OF HIRE

2 HIRE OF THE UNITS

- 2.1 The Supplier shall hire the Units to the Customer subject to the Contract.
- 2.2 The Supplier shall not, other than in exercise of its rights under the Contract or applicable law, interfere with the Customer's quiet possession of the Units during the Hire Period.

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3 HIRE PERIOD

- 3.1 Subject to clause 3.2, the hire period shall commence on delivery and shall continue until the Contract is terminated in accordance with its terms ("**Hire Period**").
- 3.2 Save where the Contract is terminated by the Customer pursuant to its terms, the Hire Period shall not be for a term shorter than the Minimum Hire Period.

4 RENTAL PAYMENTS AND DEPOSIT

- 4.1 The Supplier shall pay the Hire Payments to the Customer on the Payment Date(s).
- 4.2 The Hire Payments are payable throughout the whole Hire Period regardless of the availability of the Units for whatever reason including Total Loss.
- 4.3 The Deposit (where applicable) is a deposit against default by the Customer of payment of any Hire Payments or any loss of or damage caused to the Units. The Customer shall pay the Deposit to the Supplier on the Commencement Date. If the Customer fails without due cause to make any Hire Payments in accordance with the relevant due dates, or causes any loss or damage to the Units (in whole or in part), the Supplier shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to the Supplier any sums deducted from the Deposit within ten Business Days of a demand for the same. The Deposit (less any deductions paid to the Supplier pursuant to this clause) shall be refundable within thirty Business Days of the end of the Risk Period.

5 CUSTOMER REQUIREMENTS

- 5.1 The Customer warrants that it is a limited company, limited liability partnership, other incorporated entity, a partnership with 3 or more partners or a partnership or unincorporated association with corporate partners/members only.
- 5.2 If the warranty in clause 5.1 is untrue, the Suppliers terms and conditions for consumer contracts shall apply to the Hire Contract or Hire Purchase contract between the Customer and the Supplier (and these Conditions shall not apply).

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6 TITLE, RISK

- 6.1 Subject to clause 8 (where applicable), the Units shall at all times remain the property of the Supplier and the Customer shall have no right, title or interest in or to the Units (save for the right to possess and use the Units subject to the Contract).
- 6.2 The risk of loss, theft, damage or destruction of the Units shall:
- 6.2.1 pass to the Customer on the Delivery Date and
 - 6.2.2 in the case of Hire Contracts only, revert to the Supplier at the end of the Risk Period.

7 CONSEQUENCES OF TERMINATION

- 7.1 On termination of the Contract, however caused:
- 7.1.1 the Supplier's consent to the Customer's possession of the Units shall terminate;
 - 7.1.2 the Supplier shall deliver up the Units at such address as the Supplier requires, or if necessary, allow the Supplier or its representatives access any premises where the Units are located without notice and at the Customer's expense, for the purpose of removing the Units; and
 - 7.1.3 the Customer shall pay on the Supplier's demand any costs or expenses incurred by the Supplier in repairing any loss or damage to the Units.
- 7.2 Upon termination of the Contract by the Supplier in accordance with clauses 23.1, 23.2 or 23.3, or any other repudiation of the Contract by the Customer which is accepted by the Supplier, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand a sum equal to the whole of the Hire 6 Payments that would (but for the termination) have been payable if the Contract had continued from the date of such termination or repudiation to the end of the Minimum Hire Period.

8 PURCHASE OPTION

- 8.1 This clause 8 shall only apply where the Order specifies that the Contract is a Hire Purchase Contract
- 8.2 The Customer shall, subject to clause 8.3, have the option, exercisable by not less than five Business Days' written notice to the Customer, to purchase the Units on the last Business Day of the Minimum Hire Period at the Purchase Option Price.
- 8.3 The Purchase Option may be exercised only if:
- 8.3.1 all amounts due to the Supplier under the Contract up to the date of exercise of the Purchase Option have been paid in full by the Customer; and
 - 8.3.2 the Hire Period has not ended by reason of the Customer terminating the Contract as a result of clause 23.1, 23.2 or 23.3.
- 8.4 On the exercise of the Purchase Option pursuant to clause 8.2, such title to the Units as the Customer had on the Commencement Date shall transfer to the Supplier. The Units shall transfer to the Supplier in the condition and at the location in which they are found on the date of transfer.

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SECTION 4: TERMS OF SALE – SALES OF UNITS**9 SALE AND PURCHASE**

The Supplier sells and the Customer buys the Units free from all liens, charges and encumbrances.

10 PURCHASE PRICE

The Customer shall pay the Purchase Price on the Payment Date(s).

11 TITLE AND RISK

- 11.1 The risk in the Units shall pass to the Customer on completion of delivery.
- 11.2 Title to the Units shall not pass to the Customer until the Supplier receives payment of the Purchase Price in full (in cash or cleared funds) for the Units, in which case title to the Units shall pass at the time of payment.
- 11.3 At any time before title to the Units passes to the Customer, the Supplier may require the Customer to deliver up all Units in its possession and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Units are stored in order to recover them.

SECTION 5: TERMS OF SALE – SUPPLY OF SERVICES**12 COMMENCEMENT AND TERM**

The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until the date specified in the Order (or such other date notified by the Supplier).

13 SUPPLY OF SERVICES

- 13.1 The Services shall conform in all material respects with any specification or description set out in the Order.
- 13.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified to the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 13.3 The Supplier reserves the right to amend the description or specification of the Services if necessary to comply with any applicable law or regulatory requirement, any safety requirement or if the Supplier acting reasonably deems the amendment will not materially affect the nature or quality of the Services.
- 13.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

14 CHARGES

The Customer shall pay the Charges with respect to the Services performed by the Supplier.

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15 INTELLECTUAL PROPERTY RIGHTS

- 15.1 All Intellectual Property Rights subsisting in, arising out of or connected with the Services (other than the Intellectual Property Rights in any Customer Materials) shall vest in and be owned by the Supplier.
- 15.2 The Customer shall take all reasonable acts, and execute all documents reasonably required, to give effect to clause 15.1.
- 15.3 The Supplier grants to the Customer a fully paid-up, worldwide, non-exclusive, non-assignable, non-sublicensable, non-transferable licence to use the Deliverables (excluding materials provided by the Customer) for the sole purpose of, and to the extent required for, receiving and using the Services and the Deliverables.
- 15.4 The Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free licence to use:
- 15.4.1 any materials (including any specification) provided by or on behalf of the Customer ("**Customer Materials**") to the Supplier for the purpose of providing the Services to the Customer.
 - 15.4.2 the Customer's business name and logo in any materials or media channels used for marketing or advertising by the Supplier including, without limitation, the Supplier's website.
- 15.5 The Customer (in whole or in part), the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Customer Materials.

SECTION 6: GENERAL TERMS**16 BASIS OF CONTRACT**

- 16.1 The Order constitutes an offer by the Customer to:
- 16.1.1 hire Units;
 - 16.1.2 purchase Units;
 - 16.1.3 hire and then purchase Units; or
 - 16.1.4 purchase Services, in each case from the Supplier in accordance with the Conditions.
- 16.2 The Order shall, and shall only, be deemed to be accepted on the date of the earliest of the following occurrences:
- 16.2.1 the Supplier issuing:
 - 16.2.1.1 written acceptance of the Order; or
 - 16.2.1.2 an invoice for the Order (or part thereof); or

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- 16.2.2 the Supplier commencing performance of any part of the Contract (including, without limitation, delivery of the Units or commencement of the performance of the Services), at which point and on which date the Contract shall come into existence (the "**Commencement Date**").
- 16.3 An individual Order may relate to any or all of the hire of Units, sale of Units or supply of Services. To the extent that an Order relates to the hire of Units, sale of Units and/or supply of Services, a separate Hire Contract, Hire Purchase Contract, Sale Contract and/or Services Contract (as applicable) shall be formed which relates to the relevant part of that Order. For example, where the Order requires the Supplier to perform design Services and to sell a Unit, the design and fit out services will form a Service Contract (incorporating the relevant parts of the Order) and the sale of the Unit will form a Sale Contract (incorporating the relevant parts of the Order).
- 16.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Units or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures, or on the Supplier's website, are issued or published for the sole purpose of giving an approximate idea of the Units or Services described in them. Unless agreed otherwise in writing, they shall not form part of the Contract nor have any contractual force.
- 16.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 16.6 Any quotation given by the Supplier shall not constitute an offer and shall, in respect of any prices quoted, be an estimate only and subject to change and to any prices or other details specified in an accepted Order.
- 16.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 16.8 The Customer agrees to the Conditions applying to and forming part of every contract, agreement, arrangement or similar for the hire of Units, sale of the Units and/or supply of Services entered into between the Customer and the Supplier unless expressly agreed in writing to the contrary.
- 16.9 The Customer warrants and represents to the Supplier that the Customer is entering into the Contract wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the Customer.

17 DELIVERY OF THE UNITS

- 17.1 Subject to clause 17.4, the Supplier shall deliver the Units to the relevant Delivery Location(s) or the Customer Shall collect the Units from the Delivery Location(s) as specified in the Order on the relevant Delivery Date(s) notified by the Supplier to the Customer.
- 17.2 Delivery of the Units shall be completed on the completion of unloading or loading (as the case may be) of the Units at the Delivery Location. The Customer shall procure that a duly authorised representative of the Customer shall be present at delivery of the Units at the Delivery Location. Acceptance of delivery by such authorised representative shall constitute conclusive evidence that the Customer has examined the Units and has found them to be in accordance with the Contract, in

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accordance with the warranties in clause 18.1. If required by the Supplier, the Customer's duly authorised representative shall sign a receipt to that effect (confirming the Customer's acceptance. The Customer's authorised representative shall also supervise delivery, the relevant delivery driver and authorise any special requirements made during the delivery process.

17.3 In respect of delivery:

- 17.3.1 the Customer shall, at its sole expense, provide all requisite materials, facilities, access and suitable working conditions to enable delivery (including any loading or unloading) to be carried out safely and expeditiously;
- 17.3.2 the Customer shall comply with any obligations and requirements set out in the Information Leaflet or otherwise expressly notified by the Supplier to the Customer from time to time;
- 17.3.3 the Customer shall provide any assistance reasonably required by the Supplier;
- 17.3.4 unless delivery takes place at the Supplier's premises (or a relevant third party contractor of the Supplier), the Customer shall ensure that there is a safe and adequate access to the Delivery Location;
- 17.3.5 where the time taken to undertake the delivery of the Units at the Delivery Location exceeds the time allocated for delivery (as specified in the Order or if no time is stated, 30 minutes) and such delay is caused or contributed to by the Customer, the Customer shall pay the Supplier at the Supplier's standard charging rate from time to time (£75.00 per hour plus VAT currently); and
- 17.3.6 unless otherwise in an Order, the Customer is responsible for the loading and unloading of the Units to or from the delivery vehicle.

17.4 Any dates quoted for delivery of the Units are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Units that is caused by:

- 17.4.1 a Force Majeure Event;
- 17.4.2 any third party or any factor beyond the Supplier's reasonable control;
- 17.4.3 the Supplier (or the delivery driver or other third party acting on the Supplier's behalf) in its sole direction refusing to deliver the Units due to issues relating to safety including but not limited to weather conditions, ground conditions, accessibility and obstacles impacting delivery; or
- 17.4.4 the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Units.

17.5 Subject to clause 17.3, if the Supplier fails to deliver the Units its liability shall be limited to the costs incurred by the Customer in:

- 17.5.1 obtaining replacement Units of similar description and quality in the cheapest market available, less the Purchase Price in the case of a Sale Contract;
- 17.5.2 hiring replacement Units of similar description and quality in the cheapest market available for a period equivalent to the Customer's notice period under clause 23.4, less the Hire Payments for the same period (which shall not exceed the Minimum Hire Period) in the case of a Hire Contract or Hire Purchase Contract.

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- 17.6 If the Customer fails to take or accept (as the case may be) delivery of the Units on the date specified by the Supplier, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Units:
- 17.6.1 delivery of the Units shall be deemed to have been completed at 9.00 am on the relevant Delivery Date; and
 - 17.6.2 the Supplier shall store the Units until actual delivery takes place and charge the Customer for all reasonable related costs and expenses (including insurance and storage); and
 - 17.6.3 the Hire Payments shall remain payable from the relevant Delivery Date.
- 17.7 If ten Business Days after the day on which the Supplier notified the Customer that the Units were to be delivered/collected the Customer has not taken physical possession of them, the Supplier may, in respect of the Units, resell or rehire the Units to any third party and, in each case, terminate the Contract immediately (but without prejudice to any other right or remedy the Supplier may have).
- 17.8 The Supplier may deliver the Units by instalments, which shall be invoiced and paid for separately. Where the Supplier exercises this option, each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

18 QUALITY OF THE UNITS

- 18.1 Subject to clause 18.4, the Supplier warrants that for a period of 12 months from the Delivery Date (**Warranty Period**) any New Units shall:
- 18.1.1 conform in all material respects with their description and any applicable specification; and
 - 18.1.2 be free from material defects in design, material and workmanship.
- 18.2 Subject to clause 18.4, the Supplier warrants that for a period of 3 months from the Delivery Date (**Warranty Period**) any Used Units shall be wind and water tight.
- 18.3 The warranty in clause 18.1 shall not apply to Used Units and the warranty in clause 18.2 shall not apply to New Units.
- 18.4 Subject to clause 18.5, if:
- 18.4.1 the Customer gives notice of a failure to meet the requirements of clause 18.1 to the Supplier during the Warranty Period;
 - 18.4.2 the Supplier is then given a reasonable opportunity to examine the Units in question and/or the Customer (if asked to do so by the Supplier) returns the Units to the Supplier's place of business; and
 - 18.4.3 the defect is directly attributable to defective material, workmanship or design, then the Supplier shall, at its option, repair or replace the defective Units or reperform any defective Services, or terminate the Contract immediately (in whole or in part insofar as it relates to the defective Units) without any liability to the Supplier except that:

- 18.4.3.1 where the Contract is a Hire Contract or Hire Purchase Contract, the Supplier shall refund any Hire Payments paid in advance;
 - 18.4.3.2 where the Contract is an Agreement for Sale, the Supplier shall refund the Purchase Price; or
 - 18.4.3.3 where the Contract is a Services Contract, the Supplier shall refund any Charges paid in respect of defective Services.
- 18.5 The Supplier shall not be liable for the Units' failure to comply with the warranty set out in clause 18.1 if:
- 18.5.1 the Customer makes any further use of such Units after giving a notice in accordance with clause 18.2;
 - 18.5.2 the defect arises because the Customer failed to follow the requirements set out in the Information Leaflet or the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Units, or if there are none, good trade practice regarding the same;
 - 18.5.3 the defect arises because of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel;
 - 18.5.4 the failure is as a result of any defect notified by the Supplier to the Customer in the Information Leaflet, the Order, the Contract or otherwise in writing prior to the Commencement Date;
 - 18.5.5 the defect arises as a result of the Supplier following or relying on the content of any Customer Materials;
 - 18.5.6 the Customer alters or repairs such Units without the written consent of the Supplier;
 - 18.5.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 18.5.8 the Units differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements or to an extent which is immaterial.
- 18.6 In the event that, following delivery/collection, a material defect in the Units (or any part thereof) arises or is discovered that the Customer believes represents a breach of clause 18.1 or 18.2 (as applicable), the Customer shall notify the Supplier of that fact in writing. Upon receipt of the notice referred to in this clause 18.6:
- 18.6.1 the Supplier shall notify the Customer of the relevant charges in respect of the Supplier inspecting the alleged material defect (unless such charges have already been notified in which case those charges will apply) ("**Inspection Charge**") and the Customer shall pay such Inspection Charge to the Supplier in accordance with the requirements of the Supplier;
 - 18.6.2 upon payment of the Inspection Charge, the Supplier shall procure that a technician ("**Technician**") inspects the Units at their current location to assess the alleged material defect; and
 - 18.6.3 if the Technician determines, in its absolute and sole discretion, that a material defect:
 - 18.6.3.1 is present and such represented a breach of the warranty set out in clause 18.1 or 18.2 (as applicable) that was not detected at delivery/collection (subject always to the exceptions set out in clause 18.5), then the Supplier shall, at the Supplier's option, either (i) procure that the material defect is remedied or (ii) replace the Units or relevant defective part 13 thereof or (iii) in respect of a Hire Contract only,

terminate the Hire Contract, and in each case, the Supplier shall then refund the Customer the Inspection Charge; or

18.6.3.2 is not present or that a material defect is present but such did not represent a breach of the warranty set out in clause 18.1 or 18.2 (as applicable) or that the material defect was a breach of the warranty set out in clause 18.1 or 18.2 (as applicable) but this was rectified in accordance with clause 18.4, then the Supplier shall not be required to, but may in its absolute and sole discretion, repair or replace the alleged material defect (at such further cost as determined by the Supplier and communicated to the Customer which the Customer shall then pay in advance of any such repair or replacement) and, regardless, the Supplier shall be able to retain the Inspection Charge which shall be non-refundable.

18.7 Where any Units comprise or contain equipment or components which were not manufactured or produced by the Supplier, the warranty in clause 18.1 shall not apply and the Customer shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer and which the Supplier can transfer to the Customer.

18.8 Except as provided in this clause 18, the Supplier shall have no liability to the Customer in respect of the Units failure to comply with the warranty set out in clause 18.1.

18.9 These Conditions shall apply to any repaired or replacement Units supplied by the Supplier (except that the Warranty Period shall not be restarted with respect to any repaired or replacement Units).

18.10 Where the Customer purchases any Units that were hired to the Customer in the 12 months prior to the Commencement Date of the Sale Contract, the Warranty Period under the previous Hire Contract shall apply to those Units in place of the Warranty under clause 18.1.

19 CUSTOMER'S RESPONSIBILITIES

19.1 The Customer shall during the Risk Period:

19.1.1 ensure that the Units are kept and operated in a suitable environment, used only for the purposes for which they are designed and operated in a proper manner by trained competent staff in accordance with any operating instructions;

19.1.2 take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Units are at all times safe and without risk to health when they are being set, used, cleaned or maintained by a person;

19.1.3 maintain at its own expense the Units in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Units;

19.1.4 make no alteration to the Units and shall not remove any existing component(s) from the Units without the prior written consent of the Supplier unless the component(s) is/are replaced immediately (or if 14 removed in the

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ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Units shall vest in the Supplier immediately upon installation;

- 19.1.5 at all times keep the Units in the possession or control of the Customer and keep the Supplier informed of their location;
- 19.1.6 permit the Supplier or its duly authorised representative to inspect the Units at all reasonable times and for such purpose to enter upon any premises at which the Units may be located, and shall grant reasonable access and facilities for such inspection;
- 19.1.7 maintain maintenance records of the Units and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;
- 19.1.8 not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Units or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
- 19.1.9 not without the prior written consent of the Supplier, attach the Units to any land or building so as to cause the Units to become a permanent or immovable fixture on such land or building. If the Units does become affixed to any land or building then the Units must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Units from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;
- 19.1.10 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Units and, where the Units has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Units during the Risk Period, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Units and a right for the Supplier to enter onto such land or building to remove the Units;
- 19.1.11 not suffer or permit the Units to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Units is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Units and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 19.1.12 not use the Units for any unlawful purpose;
- 19.1.13 ensure that at all times the Units remains identifiable as being the Supplier's property and not remove any visible sign to that effect that is placed on the Units by the Supplier;

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- 19.1.14 notwithstanding anything else in the Contract, not transfer the Units outside of the United Kingdom; and
- 19.1.15 store the Units separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 19.1.16 not remove, deface or obscure any identifying mark or packaging on or relating to the Units;
- 19.1.17 keep the Supplier fully informed of all material matters relating to the Units;
- 19.1.18 notify the Supplier immediately if it becomes subject to any of the events listed in clause 23.1.2 or 23.1.3; and
- 19.1.19 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - 19.1.19.1 the Units; and
 - 19.1.19.2 the ongoing financial position of the Customer.
- 19.2 During the Hire Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following:
 - 19.2.1 insurance of the Units to a value not less than their full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
 - 19.2.2 insurance for such amounts as a prudent Supplier or operator of the Units would insure for, or such other amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Units; and
 - 19.2.3 insurance against such other or further risks relating to the Units as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise the Customer.
- 19.3 All insurance policies procured by the Customer in relation to the Units shall be endorsed to provide the Supplier with at least ten (10) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall, upon the Supplier's request, name the Supplier on the policies as a loss payee in relation to any claim relating to the Units. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 19.4 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Units arising out of or in connection with the Customer's possession or use of the Units.
- 19.5 If the Customer fails to effect or maintain any of the insurances required under the Contract, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 19.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.
- 19.7 The Customer shall indemnify the Supplier on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any:
 - 19.7.1 loss or damage to the Units (including by improper use, vandalism or theft) during the Risk Period; and/or

- 19.7.2 failure by the Customer to comply with the terms of the Contract.
- 19.8 If the Supplier's performance of any of its obligations under the Contract is hindered, prevented or delayed by any act or omission by the Customer, including any failure by the Customer to perform any obligation under the Contract ("**Customer Default**"):
- 19.8.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 19.8.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising as a result of or in connection with the Supplier's failure or delay to perform any of its obligations under the Contract; and
 - 19.8.3 the Customer shall reimburse the Supplier on written demand for any costs, expenses or losses sustained or incurred by the Supplier arising as a result of or in connection with the Customer Default.
- 19.9 The Customer shall:
- 19.9.1 ensure that the terms of the Order and any specification (or any other information) it provides is complete and accurate;
 - 19.9.2 co-operate with the Supplier in all matters relating to the Contract;
 - 19.9.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services, otherwise perform the Contract or as set out in the Contract;
 - 19.9.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services or otherwise perform the Contract, and ensure that such information is complete and accurate in all material respects;
 - 19.9.5 prepare the Customer's premises for the supply of the Services or performance of the Contract;
 - 19.9.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services or otherwise in connection with the Contract;
 - 19.9.7 comply with all applicable laws, including all applicable health and safety laws;
 - 19.9.8 ensure compliance with any requirements (statutory or otherwise) concerning health safety or welfare or any other matter which may relate to or affect the specification of the Units and/or to ensure the safety of the Supplier's employees, agents, consultants and subcontractors whilst carrying out the Contract on any premises owned, used or occupied by the Customer or as designated by the Customer;
 - 19.9.9 inform the Supplier in writing of the nature of any substance which has been carried or contained in the Units that are hired;
 - 19.9.10 comply with any additional obligations as set out in the Information Leaflet

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20 PAYMENT

- 20.1 The Supplier may increase the Hire Payments, Purchase Price or Charges by giving written notice to the Customer on an annual basis (as part of the Supplier's annual price increase) or otherwise to reflect:
- 20.1.1 any need to perform any part of the Contract outside of Business Hours; or
 - 20.1.2 any increase in the cost of the Units, Services or Units to the Supplier that is due to
 - 20.1.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, fuel, materials and other manufacturing costs);
 - 20.1.2.2 any special requirements or equipment required to be supplied or used in connection with the Contract;
 - 20.1.2.3 any changes in any applicable laws or any rules or standards issued by any government, regulatory or other competent authority;
 - 20.1.2.4 any request by the Customer to change the Delivery Date(s), quantities or types of Units, or Services required or any specification; or
 - 20.1.2.5 any delay caused by any instructions of the Customer in respect of the Units or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Units or Services.
- 20.2 Unless otherwise set out in the Order:
- 20.2.1 in respect of the Hire Contract, the Supplier shall invoice the Customer:
 - 20.2.1.1 for the Minimum Hire Period, on or at any time after the Commencement Date; and
 - 20.2.1.2 for any Hire Period following the Minimum Hire Period, on the last day of each calendar month of the relevant Hire Period;
 - 20.2.2 in respect of a Sale Contract, the Supplier shall invoice the Customer on or at any time after completion of delivery of the Units (or each instalment); and
 - 20.2.3 in respect of a Services Contract, the Supplier shall invoice the Customer on completion of the Services.
- 20.3 Subject to the Payment Date(s) set out in the Order, the Customer shall pay each invoice submitted by the Supplier:
- 20.3.1 in respect of Hire Payments:
 - 20.3.1.1 for the Minimum Hire Period, in accordance with the agreed payment terms; and
 - 20.3.1.2 for any Hire Period following the Minimum Hire Period, by direct debit (unless otherwise agreed in writing) on or before the last day of the calendar month following the month to which the Hire Payment relates;
 - 20.3.2 in respect of a Sale Contract or Services Contract, on the last Business Day of the calendar month following the calendar month of within which the relevant invoice is dated; and
 - 20.3.3 in each case, in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 20.4 If the Customer fails to make a payment due to the Supplier under the Contract by the relevant due date, then, without limiting the Supplier's remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the

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overdue sum, whether before or after judgment. Interest under this clause 20.4 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%. If the Customer fails to make payment due to the Supplier under the Contract by the due date, the Supplier shall be able to utilise any sums paid by the Customer at any time (or held by the Supplier from the Customer at any time (including any Deposit)) towards said due amount in the absolute and sole discretion of the Supplier.

- 20.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 20.6 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the hire or sale of the Units and/or the supply of the Services.
- 20.7 The Customer agrees to assume exclusive liability for and to pay all sales or use taxes, title and registration fees, VAT, domestication, personal property taxes or other taxes, tolls, levies, duties or governmental charges imposed in connection with the hire, sale, delivery, import and/or domestication of the hire or sale of the Units or the supply of the Services or otherwise in connection with the Contract, including any penalties, fines or interest thereon (collectively, "Taxes"). The Units may be subject to customs control under temporary admission arrangements. The Customer shall assume responsibility for and comply with all applicable legal, tax and customs requirements in connection with the sale, transfer, use, importation, domestication and/or re-exportation of the Units. The Customer shall provide the Supplier, upon request, with documentation evidencing compliance with those legal, tax and customs requirements and payments of any Taxes.

21 CONFIDENTIALITY

- 21.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the other party, including the other party's business, assets, affairs, customers, clients or suppliers, except as permitted by clause 21.2.
- 21.2 Each party may disclose the other party's confidential information:
- 21.2.1 to its employees, officers, representatives, agents, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, agents, contractors or subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 21; and
- 21.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 21.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

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22 LIMITATION OF LIABILITY

- 22.1 The limitations and exclusions on liability in this clause 22 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 22.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 22.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 22.3.1 death or personal injury caused by negligence;
 - 22.3.2 fraud or fraudulent misrepresentation; and
 - 22.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 22.4 Subject to clauses 22.2 and 22.3, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap. In this clause 22.4:
- cap. The cap is the lower of: (a) the total charges in the contract year in which the breaches occurred; and (b) £10,000. contract year. A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
- total charges. The total charges means all sums paid and received by the Customer under the Contract.
- 22.5 Subject to clauses 22.2 and 22.3 the following types of loss are wholly excluded:
- 22.5.1 loss of profits;
 - 22.5.2 loss of sales or business;
 - 22.5.3 loss of agreements or contracts;
 - 22.5.4 loss of anticipated savings;
 - 22.5.5 loss of use or corruption of software, data or information;
 - 22.5.6 loss of or damage to goodwill; and
 - 22.5.7 indirect or consequential loss.
- 22.6 The Contract sets forth the full extent of the Supplier's obligations and liabilities in respect of the Units and the Services (where applicable). In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier except as specifically stated in the Contract. Any condition, warranty or other term concerning the Units or the Services which might otherwise be implied into or incorporated within the Contract whether by statute, common law or otherwise, is expressly excluded. Without prejudice to the generality of the foregoing, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

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22.7 The Supplier will not, under any circumstances, be liable to the Customer under or in connection with the Contract if the Customer has not paid any amount due and payable under the Contract.

23 TERMINATION

23.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:

- 23.1.1 commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- 23.1.2 party takes any step or action in connection with its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- 23.1.3 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

23.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- 23.2.1 the Customer fails to pay any amount due under the Contract on the relevant Payment Date or as required in accordance with clause 4.3; or
- 23.2.2 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

23.3 If a Total Loss occurs in relation to the Units, the Supplier may terminate the Contract in respect of the hire of the relevant Units with immediate effect by giving notice to the Customer to that effect.

23.4 Either party shall be able to terminate a Hire Contract upon giving 1 week's prior notice to the Customer at any time on or after the expiry of the Minimum Hire Period.

23.5 Without affecting any other right or remedy available to it, the Supplier may suspend its performance under the Contract (and may collect any hired Units in accordance with clause 7.1.2) or any other agreement between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the relevant Payment Date, the Customer becomes subject to any of the events listed in clause 23.1.2 or 23.1.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

24 CONSEQUENCES OF TERMINATION

24.1 On termination of the Contract, however caused:

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- 24.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's unpaid invoices (irrespective of the due dates of such invoices) and any applicable interest; and
- 24.1.2 the Supplier shall be entitled to invoice the Customer for any un-invoiced Hire Period, Units sold or Services performed which shall be payable within 7 days of the Customer's receipt of such invoice.
- 24.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 24.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

25 **FORCE MAJEURE**

Neither party ("**Affected Party**") shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a "**Force Majeure Event**"). The time for performance of the Affected Party's obligations shall be extended accordingly. If the period of delay or non-performance of the Affected Party continues for 3 months, the other party may terminate the Contract by giving 7 days' written notice to the Affected Party.

26 **GENERAL**

26.1 Assignment and other dealings

26.1.1 The Supplier may at any time novate, assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

26.1.2 The Customer shall not novate, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

26.2 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 26.2 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

26.3 Waiver

26.3.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

26.3.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

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- 26.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 26.5 Entire agreement.
- 26.5.1 The Contract constitutes the entire agreement between the parties.
- 26.5.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 26.6 Third party rights.
- 26.6.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 26.7 **Variation.** No variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 26.8 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 26.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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