

# TG LYNES LIMITED - TERMS AND CONDITIONS FOR HIRE & THE SUPPLY OF GOODS AND SERVICES TO BUSINESSES

## 1 INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

### 1. Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or services or Hire of Equipment in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods and/or Services or hires Hire Equipment from the Supplier.

**Delivery:** the transfer of the physical possession of the Goods or Hire Equipment

**Deposit:** means any advance payment required by the Supplier in relation to the Hire Equipment.

**Force Majeure:** means any event, circumstance or cause outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events.

**Goods:** the goods or any part of them that the Supplier supplies to the Customer pursuant to this agreement and as set out in the Order

**Hire Equipment:** means any machine, article, tool, and/or device together with any substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it and as specified and provided in a Contract which are hired to the Customer.

**Hire Period:** means the period commencing when the Customer holds the Hire Equipment on hire (including Saturdays Sundays and Bank Holidays) and ending upon the happening of any of the following events: (i) the physical return of the Hire Equipment by the Customer into the Supplier's possession; or (ii) the physical repossession or collection of the Hire Equipment by the Supplier

**Liability:** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities.

**Order:** The order for the supply of Goods and/or Services made by the Customer to the Supplier or by way of the Customer's acceptance of the Supplier's quote for Goods and/or Services to the Supplier.

**Rental Payments:** the payments made by or on behalf of the Customer to the Supplier for the Hire Equipment, as calculated in accordance with the Supplier's charging rate for the hire of the Hire Equipment;

**Supplier:** means T G Lynes Ltd and will include its employees, servants, agents and/or duly authorised representatives.

**Services:** the services and/or work (if any) to be performed by the Supplier for the Customer as set out in the Order or Supplier's quotation.

2. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

3. A person includes a natural person, corporate or unincorporated body, whether or not having separate legal personality).

4. A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated or established.

5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

6. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

### 2. BASIS OF CONTRACT

2.1. These are the Conditions on which the Supplier provides the Goods and/or Services or Hire Equipment to the Customer.

2.2. The Order constitutes an offer by the Customer to purchase the Goods and/or Services or hire the Hire Equipment in accordance with these Conditions.

2.3. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.4. Should the Customer wish to amend or cancel an Order once an Order has been accepted in accordance with clause 2.3 above this shall be at the Supplier's absolute discretion.

2.5. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or Services or Hire Equipment contained in the Suppliers catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services or Hire Equipment described in them. They shall not form part of the Contract or have any contractual force.

2.6. 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 trade, custom, practice or course of dealing.

2.7. Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 3 months from its date of issue.

2.8. Goods and Hire Equipment are supplied subject to them being available for purchase or hire to the Customer at the

time required by the Customer. The Supplier will not be liable for any loss suffered by the Customer as a result of the Goods or Hire Equipment being unavailable for delivery or hire where the Goods or Hire Equipment are unavailable due to circumstances beyond the Supplier's control.

2.9. If the Supplier is unable to supply the Goods due to unavailability the Supplier will give notice of this to the Customer as soon as reasonably practicable. The unavailable Goods will be placed on back order by the Supplier and the Supplier shall notify the Customer when the Goods become available for Delivery or collection.

2.10. The Customer shall:

- Ensure that the terms of the Order are complete and accurate
- Co-operate with the Supplier in all matters relating to the Goods and/or Services and/or Hire Equipment
- Provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required to provide the Goods and/or Services and/or Hire Equipment.
- Provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods and/or Services and/or Hire Equipment.
- Obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start
- Comply with all applicable laws, including health and safety laws relating to the provision of Services

### 3. PAYMENT

3.1. The amount of any Deposit, Rental Payments and/or charges for any Goods and/or Services shall be as quoted to the Customer or otherwise as shown in the Supplier's current price list from time to time or as set out in the Order, exclusive of VAT.

3.2. Where a Deposit is required for the Hire Equipment it must be paid in advance of the Customer hiring the Hire Equipment. The Supplier may also require an initial payment on account of the Rental Payments in advance of the Customer hiring the Hire Equipment.

3.3. The Deposit is a deposit against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Hire Equipment. If the Customer fails to make any Rental Payments in accordance with this agreement or causes any loss or damage to the Hire Equipment (in whole or in part), the Supplier shall be entitled to apply the Deposit against such default, loss or damage.

3.4. The Customer shall pay the Rental Payments or charges for any Goods or Services, or any other sums payable under the contract to the Supplier at the time and in the manner agreed. The Supplier's prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable.

3.5. All amounts due under this agreement shall be paid in full and without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

3.6. If the Customer fails to make a payment due to the Supplier under this agreement by the due date the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after Judgment.

3.7. Interest under this clause will be charged in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 (as amended) or at the rate of 4% above the base rate of from time to time of the Supplier's bank whichever is the higher.

3.8. Any monies received by the Supplier from the Customer may be applied by the Supplier at its option against any additional administrative costs and interest charged prior to application against any principal sums due from the Customer against which it may be applied in any order.

3.9. The Supplier may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend this Contract if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.

10. The Supplier reserves the right to increase the price of Goods and/or Services by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

- Any factor beyond the control of the Supplier;
- Any request by the Customer to change the delivery date, quantities or types of Goods ordered or the Goods specification;
- Any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of Goods.

3.11 The Customer shall be liable for all costs reasonably incurred by the Supplier in the collection of any overdue invoices or other amounts pursuant to this contract.

### 2. RISK OWNERSHIP AND INSURANCE

4.1 Risk in the Hire Equipment and any Goods will pass immediately to the Customer when they leave the physical possession or control of the Supplier.

4.2 Risk in any Hire Equipment will not pass back to the Supplier from the Customer until the Hire Equipment is back in the physical possession of the Supplier. This shall apply even if the Supplier has agreed to cease charging the Rental Payments.

4.3 Any Hire Equipment shall at all times remain the property of the Supplier and the Customer shall have no right, title or interest in or to the Hire Equipment. The Customer must not deal with the ownership or any interest in the Hire

Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending. However the Customer may re-hire the Hire Equipment to a third party with the prior written consent of the Supplier.

4.4 Title to any Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.

4.5 The full legal and beneficial interest to any Goods shall remain vested in the Supplier until payment of the invoice in full and until title to the Goods has passed to the Customer, the Customer shall:

- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Goods supplied by the Supplier
- not remove, deface or obscure any identifying mark or packaging on or relating to the Goods
- not annex any of the Goods to its property
- allow the Supplier access to any of its premises where the Goods are held, at anytime on reasonable notice to inspect the Goods.

4.6 The Customer shall be at liberty to sell the Goods, in the ordinary course of business on the basis that the proceeds of any sale of the Goods are to be held on trust for the Supplier and not mixed with any other money in payment of the sums owing to the Customer.

4.7 The Supplier may revoke the Customer's right to sell the Goods in accordance with clause 4.6 immediately by written notice.

4.8 Upon determination of the Customer's right to sell the Goods, the Customer shall place the Goods at the disposal of the Supplier who shall be entitled to enter upon any premises of the Customer for the purpose of removing such Goods from the premises.

4.9 For Hire Equipment the risk of loss, theft damage or destruction of the Equipment shall pass to the Customer on Delivery. The Hire Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Hire Equipment is in the possession, custody or control of the Customer until such time as the Equipment is redelivered to the Supplier. During the Rental Period and any extended period the Customer shall at its own expense, obtain and maintain the following insurances:-

- insurance of the Hire Equipment to a value not less than its 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;
- insurance for such amounts as a prudent owner or operator of the Hire Equipment would insure for, or such 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 Hire Equipment; and
- insurance against such other or further risks relating to the Hire Equipment as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Customer.

4.10 The Supplier may provide reasonably priced insurance at an additional cost to the Rental Payments in order that the Customer can comply with clause 4.5 above.

4.11 In respect of Hire Equipment the Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Hire Equipment arising out of or in connection with the Customer's possession or use of the Hire Equipment.

4.12 If the Customer fails to effect or maintain the insurance as required at clause 4.5 above 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.

4.13 The Customer shall on demand supply copies of the relevant insurance policies required under clause 4.5 above together with proof of premium payment to confirm the insurance arrangements.

4.14 The proceeds of any such insurance shall be held by the Customer on trust for the Supplier and be paid to the Supplier on demand. The Customer must not compromise any claim in respect of the Hire Equipment and/or any associated insurance without the Supplier's written consent.

### 3. DELIVERY, COLLECTION AND SERVICES

1. The Supplier shall ensure that:

- Each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods
- Where the Customer is to collect Goods from the Supplier it shall provide a collection note which shows the date of the Order, the type and quantity of the Goods

2. All delivery and collection notes in relation to the supply Goods must be signed by the Customer.

3. Any dates provided for delivery or collections are approximate only and time shall not be of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions.

4. It is the responsibility of the Customer to collect any Hire Equipment from the Supplier and return them to the Supplier at the end of the Hire Period. If the Supplier agrees to deliver or collect the Hire Equipment to and/or from the Customer it will do so at its standard delivery cost

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- and such delivery and/or collection will form part of the Services.
5. Where the Supplier provides Services the persons performing the Services are servants of the Customer and once the Customer instructs such person they are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice except to the extent that the persons performing the Services are negligent.
  6. The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to utilities for the Supplier's employees, subcontractors and/or agents to allow them to carry out the Services. The Customer will ensure that the site where the Services are to be performed is, where necessary, cleared and prepared before the Services are due to commence.
  7. If any Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation.
  8. All Goods must be examined upon delivery by the Supplier. The Supplier shall not be liable in respect of any shortage, damage or other defects in the Goods which should have been reasonably apparent upon inspection on delivery, unless the Customer notifies the Supplier in writing within 14 days of delivery or collection in respect of any shortage, damage or other defect. The Customer shall be deemed to have accepted the Goods if no such notice is received.
  9. The quantity of any consignment of Goods as recorded by the Supplier upon despatch from the Supplier shall be conclusive evidence of the quantity received by the Customer on delivery or collection unless the Customer can provide conclusive evidence to the contrary.
  10. The Supplier reserves the right to inspect all Goods for which notice is received pursuant to clause 5.8 above prior to agreeing any part refund, full refund or product exchange/replacement. Non-standard/un-stocked products ordered specially will not be credited. Return of current stock items will be reviewed on an individual basis. In the event a decision is made to accept to return of goods for credit, all items will be subject to a minimum of 25% re-stocking charge.
- ## 6. CARE OF HIRE EQUIPMENT
- 6.1. The Customer shall during the term of this agreement:
    - a) ensure that the Hire Equipment is kept and operated in a suitable environment for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Supplier;
    - b) take such steps as may be necessary to ensure that the Hire Equipment is at all times safe and without risk to health when it is being set, used, cleaned, or maintained by a person at work;
    - c) maintain at its own expense the Hire Equipment in good and substantial repair in order to keep it in as good an operating condition as at the start of the agreement, including replacement of worn, damaged and lost parts, and shall make good any damage to the Hire Equipment;
    - d) make no alteration to the Hire Equipment and shall not remove any existing component from the Equipment without the prior written consent of the Supplier;
    - e) keep the Supplier fully informed of all material matters relating to the Hire Equipment;
    - f) at all times keep the Hire Equipment in the possession or control of the Customer and keep the Supplier informed of location;
    - g) permit the Supplier or its duly authorised representative to inspect the Hire Equipment at all reasonable times;
    - h) maintain operating and maintenance records of the Hire Equipment and make copies of such records readily available to the Supplier as the Supplier may reasonably require;
    - i) not to use the Hire Equipment for any unlawful purpose;
    - j) ensure that at all times the Hire Equipment remains identifiable as being the Supplier's property;
    - k) not to permit to be done anything which could invalidate the insurances referred to at clause 4.5;
    - l) where the Hire Equipment requires fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Hire Equipment is properly installed by a qualified and competent person.
  - 6.3 The Hire Equipment must be returned by the Customer in good working order and condition (fair wear and tear excepted) and in a clean condition together with all insurance policies, licences, registration and other documents relating to the Hire Equipment.
- ## 7. BREAKDOWN OF HIRE EQUIPMENT
- 7.1 The Supplier warrants that the Hire Equipment shall substantially conform to its specification, be of satisfactory quality and fit for any purpose held out by the Supplier. The Supplier shall use all reasonable endeavours to remedy, free of charge, any material defect in the Hire Equipment provided that:
    - (a) the Customer notifies the Supplier of any defect in writing within 10 Business Days of the defect occurring or of becoming aware of the defect;
    - (b) the Supplier is permitted to make a full examination of the alleged defect;
    - (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Customer's authorised personnel;
    - (d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Supplier or on its behalf; and
    - (e) the defect is directly attributable to defective material, workmanship or design.
  - 7.2 If the Supplier fails to remedy any material defect in the Hire Equipment in accordance with clause 7.1, the Supplier shall, at the Customer's request, accept the return of part or all of the Hire Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).
  - 7.3 The Customer shall be responsible for all expenses, loss (including loss of Rental Payments) and/or damage suffered by the Supplier arising from any breakdown of the Hire Equipment due to the Customer's negligence, misdirection and/or misuse of the Hire Equipment.
  - 7.4 The Customer must not repair or attempt to repair the Hire Equipment unless authorised to do so in writing by the Supplier.
- ## 8. LOSS OR DAMAGE TO THE HIRE EQUIPMENT
- 8.1 If the Hire Equipment are returned in damaged, unclean and/or defective state except where due to fair wear and tear and/or an inherent fault in the Hire Equipment the Customer shall be liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Hire Equipment to a condition fit for re-hire and to pay the Rental, in accordance with the provisions of clause 8.3, until such repairs and/or cleaning have been completed.
  - 8.2 The Customer will pay to the Supplier the replacement cost on a new for old basis of any Hire Equipment which is lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to the Supplier under any policy of insurance taken out in accordance with these conditions.
  - 8.3 The Customer shall pay the Rental Payments for the Hire Equipment up to and including the date it notifies the Supplier that the Hire Equipment has been lost, stolen and/or damaged beyond economic repair. From that date until the Supplier has replaced such Hire Equipment the Customer shall pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages being equal to two thirds of the Rental Payment that would have applied for such Hire Equipment for that period. The Supplier shall use its reasonable commercial endeavours to purchase replacements for such Hire Equipment as quickly as possible using the monies paid under clause 8.2 above.
- ## 9. TERMINATION BY NOTICE FOR HIRE EQUIPMENT
- 9.1 If the Hire Period has a fixed duration, subject to the provisions of Section 10 neither the Customer nor the Supplier shall be entitled to terminate the Contract before the expiry of that fixed period unless agreed with the other party in writing.
  - 9.2 If the Hire Period does not have a fixed duration either of the Customer or the Supplier is entitled to terminate the Contract upon giving to the other party any agreed period of notice.
  - 9.3 If no period of notice has been agreed or specified the Customer may terminate the Hire Period by the physical return of the Hire Equipment to the Supplier.
  - 9.4 The Supplier shall be entitled to terminate the hire of the Hire Equipment by giving not less than 14 days' notice to the Customer.
- ## 10. DEFAULT
- 10.1 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:
    - a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
    - b) the Customer commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
    - c) the Customer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
    - d) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
    - e) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
    - f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer (being a company);
  - h) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - i) a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
  - j) the Customer (being an individual) is the subject of a bankruptcy petition, application or order;
  - k) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
  - l) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 10.1d) to 10.1k) (inclusive);
  - m) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - n) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their affairs or becomes a patient under any mental health legislation
- ## 11. CONSEQUENCES OF TERMINATION
- 11.1 Upon termination of this agreement however caused:
    - a) the Supplier's consent to the Customers possession of the Hire Equipment shall terminate and the Supplier may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Hire Equipment and for this purpose may enter the site or any premises at which the Hire Equipment is located; and
    - b) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Supplier on demand:
      - i) all Rental Payments or unpaid invoices and other sums due but unpaid at the date of such demand together with any interest accrued;
      - ii) any costs and expenses incurred by the Supplier in recovering the Hire Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
  - 11.2 Upon termination of this agreement the Customer shall pay to the Supplier on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period.
  - 11.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or 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 agreement which existed at or before the date of termination or expiry.
- ## 12. LIMITATIONS OF LIABILITY
- 12.1 All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.
  - 12.2 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
  - 12.3 Any defective Hire Equipment must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any Liability for defective Hire Equipment.
  - 12.4 The Supplier shall have no Liability to the Customer if, without just cause, any monies due in respect of the Goods or Hire Equipment and/or the Services have not been paid in full by the due date for payment.
  - 12.5 The Supplier shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Goods or Hire Equipment and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
  - 12.6 The Supplier is not the manufacturer of the Goods and is not liable to the Customer in any respect for any defect, loss, claim or damage relating to the manufacture of the Goods.
  - 12.7 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer.
  - 12.8 The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.

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- 12.9 The Supplier shall have no Liability to the Customer for any:-
- 12.9.1 consequential losses (including loss of profits and/or damage to goodwill);
  - 12.9.2 economic and/or other similar losses;
  - 12.9.3 special damages and indirect losses; and/or
  - 12.9.4 business interruption, loss of business, contracts and/or opportunity.
- 12.10 The Supplier's total Liability to the Customer under and/or arising in relation to any Contract shall not exceed 5 times the amount of the Rental Payment and charges for Services (if any) under that Contract or the sum of £1,000/€1250 whichever is the higher. To the extent that any Liability of the Supplier to the Customer would be met by any insurance of the Supplier then the Liability of the Supplier shall be extended to the extent that such Liability is met by such insurance.
- 12.11 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- 12.10.1 Liability for breach of contract;
  - 12.10.2 Liability in tort/delict (including negligence); and
  - 12.10.3 Liability for breach of statutory and/or common law duty; except clause 12.9 above which shall apply once only in respect of all the said types of Liability.
- 12.12 Nothing in this Contract shall exclude or limit the Liability of the Supplier for death or personal injury due to the Supplier's negligence nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.
- 13 GENERAL**
- 13.1 Each hire of an item of Hire Equipment shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Equipment.
- 13.2 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.
- 13.3 The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Supplier and arising from or due to any breach of contract, any tortious/delictual act and/or omission and/or any breach of statutory duty by the Customer.
- 13.4 The Supplier shall have no Liability to the Customer for any delay and/or non performance of a Contract to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 13.5 All third party rights are excluded and no third parties shall have any rights to enforce the Contract. This shall not apply to any finance company with whom the Supplier has an outstanding finance agreement relating to the Hire Equipment. Such finance company shall, subject to the Supplier's consent, have the right to enforce this Contract as if they were the Supplier.
- 14. SEVERANCE**
- If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provisions shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 15. RIGHTS AND REMEDIES**
- Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not, exclusive of, any rights or remedies provided by law.
- 16. WAIVER**
- Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17. ENTIRE AGREEMENT**
- a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of 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 based on any statement in the Contract.
- 18. VARIATION.**
- Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 19. GOVERNING LAW.**
- This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with the law of England and Wales.
- 20. JURISDICTION.**
- Each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation.