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FAST-FORM SYSTEMS LTD TERMS & CONDITIONS FOR HIRE & SALES:

Hire T & C's

1. DEFINITIONS

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

"Act" means part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended).

"Applicable Laws and Regulation" means any and all applicable laws, statutes, regulations, regulatory policies, guidelines or industry codes or standards which apply to the Plant and the use thereof during the Hire Period.

"Collection" means the physical transfer of the Plant from the Hirer to the Owner which shall occur after it has been loaded.

"Collection Period" shall have the meaning set out in clause 19. (b).

"Conditions" means these terms and conditions of hire which shall form part of the Contract of hire for the Plant between the Hirer and the Owner.

"Contract" is the Contract between the Owner and the Hirer for the hire of Plant, which incorporates the Quotation and is governed by these Conditions.

"Credit Account" means a credit account for the hire of the Plant given by the Owner to a Hirer which is subject to these terms and conditions.

"Credit Account Customers" means those Hirers who hold a Credit Account with the Owner in respect of the hire of the Plant.

"Delivery" means the physical transfer of possession of the Plant to the Hirer at the Site which shall occur before it has been unloaded by the Hirer and "Delivered" shall be construed accordingly.

"Delivery Cage" means the cage in which the Plant is Delivered.

"Delivery Note" means the delivery note to be executed by the Hirer upon Delivery of the Plant, which shall be subject to these Conditions.

"Designs" means the Owner's designs in respect of the use of the Plant at the Site provided to the Hirer.

"Due Date" means the date on which payment becomes due from the Hirer to the Owner under clause 17.

"Final Date for Payment" means the final date on which the sums payable under clause 17 shall be made, as calculated in accordance with clause 17. (h).

"Hire Charges" means the charges (set out in the Quotation) payable by the Hirer to the Owner for the Hire of the Plant in accordance with the terms set out herein.

"Hire Period" shall commence from the time when the Plant leaves the Owner's depot or place where last employed and shall continue until the Plant is received back at the Owner's named depot or other agreed location. For the avoidance of doubt the Hire Period includes the time Plant is left on site during a Holiday Period.

"Hirer" is the Company, firm, person, Corporation or public authority taking the Owner's Plant on hire and includes their successors or personal representatives (whether the same is a Credit Account Holder or a Non Credit Account Holder).

"Holiday Period" covers any cessation of work over Easter, Christmas and the New Year; as well as any other Bank or Public holidays.

"Industry Best Practice" the exercise of **the best standards of skill, diligence, prudence and foresight which would be expected from a skilled and experienced person engaged in the same type of industry as the Hirer (including, but not limited to, operating in accordance with all Applicable Laws and Regulations and taking due account of any applicable guidelines from any relevant authority).**

"Intellectual Property Right" any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks and registered designs applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, moral rights, know-how and any other intellectual property rights which subsist in documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures marketing methods and procedures and advertising literature, including the "look and feel" of any advertising literature.

"Losses" all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation) and all other interest, penalties and other costs and expenses (howsoever incurred).

"Non Credit Account Customers" those Hirers who do not hold a credit account with the Owner in respect of the hire of the Plant.

"Minimum Hire Period" means the minimum hire period for each unit of the Plant as stated on the Quotation.

"Owner" is Fast-Form Systems Limited (CRN: 08636930) whose registered office is at Unit 1 Omega Business Park Estate Road 6, South Humberside Industrial Estate, Grimsby, South Humberside, England DN31 2TG.

"Pallet" means the containers that the Owner may provide the Plant in.

"Payless Notice" means a written notice from the Hirer to the Owner stating (i) the amount it considers payable by it to the Owner in respect of the relevant

application for payment; and/or (ii) the basis upon which that sum is calculated.

“Payment Notice” means a written notice from the Hirer to the Owner stating (i) the amount it considers payable by it to the Owner in respect of the relevant application for payment; and/or (ii) the basis upon which that sum is calculated.

“Plant” covers all classes of plant, or replacement plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefor, which the Owner agrees to hire to the Hirer, or anything which is supplied by the Owner to effect the hire, and anything supplied by the Owner for the safe operation and routine inspection and maintenance of the plant, including, but not limited to, the plant set out in the Quotation.

“Quotation” means the quotation to which these terms and conditions are attached to and which alongside these terms and conditions shall constitute the Contract between the Owner and the relevant Hirer.

“Risk Period” shall have the meaning set out in clause 10. (b) below.

“Scheme” means the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649) (as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (Wales) Regulations 2011).

“Security Deposit” means the deposit payable by Non Credit Account Customers to the Owner in accordance with the terms set out hereunder, as set out in the Quotation.

“Site” means the site specified in the Quotation or if none is stated, the site to which the Plant is to be delivered by the Owner.

“Site Plan and Works Designs” means the plan of the site and designs for the works to be carried out on the Site in respect of which the Hirer is hiring the Plant to be utilised in respect of.

“Waiting Time” shall have the meaning set out in clause 5. (d).

“Working Day” shall be from 8.00 am to 4.30 pm, Monday to Friday on any day on which the banks in England are open.

2. EXTENT OF CONTRACT

- (a) All Credit Account Customer acknowledge, agree and confirm that by opening a Credit Account with the Owner, they agree that these Conditions shall apply to the exclusion of all other terms and conditions in respect of each and every individual Contract the relevant Hirer enters into with the Owner in respect of the hire of Plant. The remainder of this clause 2 shall apply to any attempt by a Credit Account Customer to incorporate any other terms and conditions into individual Contracts of hire in respect of the Plant.
- (b) Without prejudice to clause 2. (a), the Hirer shall be deemed to have accepted the Quotation and these Conditions upon the earlier of;
 - i. the Hirer providing acceptance of the Quotation (whether the same is given in writing or orally); or
 - ii. the Hirer receiving Delivery of the Plant (whether or not the Plant is actually unloaded by the Hirer and whether or not the Hirer’s representative signs a Delivery Note).
- (c) By accepting a Quotation (howsoever that occurs) or opening a Credit Account, the Hirer accepts that no terms, conditions or warranties other than as specifically set forth in these Conditions shall be deemed to be incorporated or to form part of a Contract or shall otherwise govern the relationship between the Owner and the Hirer in relation to the hire of any particular Plant. This excludes all other terms or conditions which the Hirer may seek to apply under any order or acknowledgement or acceptance or similar document or which apply by way of a course of dealings and supersedes all prior negotiations, representations or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by the Owner.
- (d) The Hirer may, for its own administrative convenience, issue its standard terms and conditions to the Owner, however the Hirer acknowledges, agrees and confirms that its standard terms and conditions shall function only as an acceptance of the Quotation, subject to these Conditions and shall otherwise have no contractual effect. To the extent that any other term and conditions apply to the agreement between the Hirer and the Owner by operation of law or otherwise, the Hirer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Hirer that is inconsistent with these terms.
- (e) The Owner and the Hirer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract, except that a person who is a successor to or an assignee of the rights of the Owner is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).
- (f) The Owner shall hire the Plant to the Hirer for use at the Site subject to the terms and conditions of this agreement. Save in the exercise of its rights under this agreement or applicable at law, the Owner shall not interfere with the Hirer’s quiet possession of the Plant.

3. ACCEPTANCE OF PLANT

In addition and without prejudice to clauses 2, the Hirer shall ensure that an authorized representative, that has authority to sign the Delivery Note on behalf of the Hirer, is present at Delivery of the Plant. Execution of the Delivery Note shall (as applicable) act either as further confirmation from the Hirer that these Conditions apply to the Contract between the Hirer and the Owner in respect of the hire of the Plant or shall constitute an acceptance that these Conditions apply to the Contract between the Hirer and the Owner in respect of the hire of the Plant and will do so for the entirety of the Hire Period.

4. UNLOADING AND LOADING

- (a) The Hirer shall be responsible for and undertakes to (at its own cost);
 - i. provide the Owner with unobstructed access to the Site at the time agreed between the parties so as to facilitate the Delivery and Collection of the Plant (including unloading and loading) which shall occur by way of use of a heavy goods vehicle by the Owner unless agreed otherwise between the parties in writing;
 - ii. provide the Owner with adequate legal parking (including procuring and providing any necessary permit) for a heavy goods vehicle (or such other vehicle agreed between the parties in writing) at the Site to facilitate the Delivery and Collection of the Plant (including unloading and loading); and
 - iii. unless otherwise agreed in writing, unload the Plant at Delivery from and load the Plant at Collection onto the Owner’s delivery vehicle in accordance with this clause 4.
- For the avoidance of doubt, if the Hirer fails to comply with its obligations under this clause 4. (a) the Owner shall be entitled to immediately abort any Delivery or Collection and the Hirer shall be charged in full for such an aborted Delivery or Collection and for any further Deliveries or Collections carried out by the Owner (with such charges to include, but not be limited to any charges for illegal parking the Owner (or its representatives or sub-contractors) incur during Delivery or Collection).
- (b) The Owner will automatically use a heavy goods vehicle for Delivery and Collection and the Hirer shall ensure it will comply with clause 4. (a) in respect of this vehicle type. The Hirer warrants that the Site is suitable for delivery by a heavy goods vehicle and to the extent the Hirer fails to notify the Owner that the Site is not suitable for a heavy goods vehicle and arrange an alternative vehicle for Delivery and/or Collection, it shall be liable for any aborted Delivery or Collection costs incurred. The Hirer shall also be liable for any additional costs incurred by the Owner in using any other vehicle type as a result of the Site being unsuitable for Delivery or Collection by a heavy goods vehicle.
 - (c) Without prejudice to the Hirer’s primary responsibility for loading and unloading the Plant at Delivery and Collection, any personnel supplied by the Owner for unloading and/or loading the Plant shall be deemed to be under the direction and control of the Hirer. Such personnel shall for all purposes in connection with their carrying out the unloading and/or loading of the Plant be regarded as the servants or agents of the Hirer and without prejudice to any of the provisions of clause 12 (c), the Hirer shall be solely responsible for all claims arising in connection with unloading and/or loading of the Plant by, or with the assistance of, such personnel. If the Owner’s personnel provide services in respect of loading and unloading the Plant and save where it expressly stated that such a service is included within the Hire Charges, the Owner shall be entitled to charge at its standard rates in place from time to time for each individual that is engaged in providing those services to the Hirer.

- (d) **Unloading and loading at Delivery or Collection must not be carried out by hand and must be carried out by the use of a lorry loader, Hiab or forklift (as applicable).** For the avoidance of doubt, Delivery or Collection by the Owner does not include the provision of a lorry loader, Hiab or forklift or any personnel with the requisite qualifications to operate such equipment. Provision of a lorry loader, Hiab or forklift and personnel can be provided on request, but the Owner shall be entitled to charge the Hirer for use of the same at the Owner's standard rates in place from time to time. Use of any of the Owner's equipment (including tail lifts, trolley jacks or forklifts) during the Delivery or Collection of the Plant shall be at the Hirer's risk and it is the Hirer's responsibility to oversee the Owner's personnel in accordance with clause 4. (c) Above should they be requested to assist.
- (e) The Hirer agrees and warrants it has the capability during the loading and unloading of the Plant to lift the Delivery Cages and/or Pallets by the use of appropriate slings underneath the Delivery Cages and/or Pallets and the Hirer agrees not to lift the Delivery Cages in any other manner (including by the bars) as this will cause damage. If the Hirer has any doubt as to the unloading or loading method to be used for the Delivery Cages it should contact the Owner immediately for instructions and any damaged Delivery Cages and/or Pallets will be charged to the Hirer at a rate of £250.00 (plus any applicable VAT) per Delivery Cage and/or Pallet. In addition, the Hirer acknowledges that the Delivery Cages and/or Pallets are the property of the Owner at all times and if left at the Site after Delivery, shall form part of the Plant which is being hired to the Hirer and these terms shall apply in their entirety to such a hire throughout the Hire Period.

5. DELIVERY AND COLLECTION

- (a) Save as set out in clause 4 above in respect of unloading and loading of the Plant, Delivery and Collection of the Plant shall be made by the Owner and the Owner shall use all reasonable endeavours to effect the Delivery or Collection of the Plant by the date and time agreed between the parties. However, time shall not be of the essence in respect of Delivery or Collection.
- (b) The Hirer and the Owner shall agree a time slot for the Delivery or Collection of the Plant and if as a result of the Hirer failing to comply with its obligations hereunder, the Owner is unable to effect the Delivery or Collection within the agreed time slot then the Owner (or their agents) shall be entitled to abort the Delivery or Collection and the Hirer shall be charged in full for such an aborted Delivery or Collection and for any further Deliveries or Collections carried out by the Owner.
- (c) The Owner shall be entitled at any time and without liability to the Hirer to change any agreed Delivery or Collection date and time slot and the Hirer shall ensure that it complies with its obligations hereunder in respect of any revised Delivery or Collection date or time slot. The Hirer shall not be entitled to change any Delivery or Collection date or time once agreed without the written consent of the Owner and the Hirer shall be liable for any aborted Delivery or Collection costs incurred by the Owner in the event of such a change.
- (d) In addition and without prejudice to clause 5. (b) and (c) above, if the unloading of the Plant at Delivery and/or the loading of the Plant at Collection has not been completed within 40 minutes of the arrival at Site of the Owner's representatives or agents who are to effect Delivery or Collection ('Waiting Time'), then the Hirer acknowledges that after the Waiting Time has lapsed, at the discretion of the Owner;
- the Hirer will be charged £50 per 30 minutes or part thereof that the Owner's representatives or agents wait at the Site to effect the Delivery or Collection; and/or
 - the Delivery or Collection may be aborted by the Owner's representatives or agents at any time meaning the Hirer shall be charged in full for such aborted Delivery or Collection (including, but not limited to any charges under clause 5. (d) i. above) and for the cost of any further Deliveries or Collections carried out by the Owner.
- (e) Deliveries and Collection charges quoted by the Owner are wholly dependent on all the Plant, Hired by the Hirer being Delivered and Collected together in one Delivery or Collection. Any part Deliveries or part Collections will result in the Hirer being charged for any additional Deliveries and/or Collections the Owner carries out. A quotation is available for part Deliveries or Collections on request.
- (f) The Hirer shall procure that a duly authorised representative of the Hirer (who the Hirer warrants shall have authority to bind the Hirer) shall be present at the Delivery and Collection of the Plant. Unless notification in writing to the contrary is received by the Owner from the Hirer in the case of Plant supplied within one Working Day of Delivery of the Plant, the Plant shall be deemed to be in good order (save for either an inherent fault or a fault not ascertainable by reasonable examination) and to the Hirer's satisfaction.
- (g) The Hirer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's and the Owner's rated capacity and in accordance with the manufacturer's and/or the Owner's recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted).

6. SERVICING AND INSPECTION

The Hirer shall, at its own cost, at all reasonable times allow the Owner, his agents or his insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Hirer shall allow such access during the Working Day and at a time to suit the Hirer.

7. SITE CONDITIONS

- (a) The Hirer is deemed to have knowledge of the Site where the Plant is to be delivered and the Hirer warrants that the condition of the Site or place of Delivery of the Plant is suitable for the use of such Plant. For the avoidance of doubt, the Hirer shall be liable to the Owner for the Hire Charges whether or not it can actually use the Plant during the Hire Period as a result of its failure to assess the condition of the Site in breach of this clause 7.
- (b) The Hirer warrants and represents that the Site Plan and Works Designs provided to the Owner to enable it to provide the Designs give an accurate and complete plan of the Site and design of the works to be completed by the Hirer. To the extent that the Site Plan and Works Designs are inaccurate or incomplete and this results in the Owner having to complete revisions to the initial Designs it provides to the Hirer or further Plant to be hired by the Hirer from the Owner, the Hirer shall be liable to the Owner in full for any and all costs of those revisions at the Owner's standard rates in place from time to time.
- (c) In addition to other charges payable by the Hirer under clause 7. (b), if inaccuracies or incomplete elements of the Site Plan and Works Designs result in the Hirer being unable to use the Plant shall be liable to the Owner for the Hire Charges whether or not it can actually use the Plant during the Hire Period.

8. HIRER'S RESPONSIBILITIES (INCLUDING THE USE OF HANDLING OF THE PLANT)

- (a) In addition and without prejudice to the Hirer's other obligations under this Contract, the Hirer shall at all times during the Hire Period;
- ensure that the Plant is unloaded on Delivery, loaded at Collection, kept, erected and operated in a suitable environment and used only for the purpose for which it is designed; ensure that the Plant is unloaded on Delivery, loaded at Collection, kept, erected and operated in a proper manner by trained, competent staff in accordance with the operating instructions provided by the Hirer (which for the avoidance of doubt shall be set out in the Designs and it shall be the responsibility of the Hirer to ensure it has the operating instructions from the Hirer before it carries out the erection of the Plant);
 - ensure the Plant is kept, erected and operated in accordance with all Applicable Laws and Regulation and Industry Best Practice;
 - allow time for the erection of the Plant in its timetable for its works;
 - take such steps (including compliance with all safety and usage instructions provided by the Owner) as may be necessary to ensure, so far as is reasonably practicable, that the Plant is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - make no alteration to the Plant and shall not remove any existing component(s) from the Plant without the prior written consent of the Owner. Title and property in all substitutions, replacements, renewals made in or to the Plant shall vest in the Owner immediately upon installation;
 - keep the Owner fully informed of all material matters relating to the Plant;
 - maintain operating and maintenance records of the Plant and make copies of such records readily available to the Owner, together with such additional information as the Owner may reasonably require;
 - not, without the prior written consent of the Owner, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Plant or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - not without the prior written consent of the Owner, attach the Plant to any land or building so as to cause the Plant to become a permanent or immovable fixture on such land or building. If the Plant does become affixed to any land or building then the Plant must be capable of being removed without

material injury to such land or building and the Hirer shall repair and make good any damage caused by the affixation or removal of the Plant from any land or building and indemnify the Owner against all Losses, costs or expenses incurred as a result of such affixation or removal;

- x. not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Owner in the Plant and, where the Plant has become affixed to any land or building, the Hirer must take all necessary steps to ensure that the Owner may enter such land or building and recover the Plant both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Owner of any rights such person may have or acquire in the Plant and a right for the Owner to enter onto such land or building to remove the Plant;
 - xi. not suffer or permit the Plant to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Plant is so confiscated, seized or taken, the Hirer shall notify the Owner and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Plant and shall indemnify the Owner on demand against all Losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - xii. not use the Plant for any unlawful purpose;
 - xiii. ensure that at all times the Plant remains identifiable as being the Owner's property and the Hirer shall not remove, deface or cover up the Owner's name plate or mark on the Plant indicating that it is its' property;
 - xiv. at the end of the Hire Period make the Plant or on earlier termination of this agreement make the Plant available for Collection by the Owner in accordance with the terms set out herein; and
 - xv. not do or permit to be done anything which could invalidate the insurances referred to in clause 10.
- (b) The Hirer shall be responsible for and shall indemnify and hold the Owner harmless in respect of any Losses suffered by the Owner as a result of the Owner's breach of this agreement (including, but not limited to a breach of clause 8. (a)) and for any of the following;
- i. any and all Losses suffered as a result of the Hirer's (including its employees, servants and any other party it is responsible for) use of the Plant otherwise than in accordance the Owner's instruction which causes a loss or damage to the Plant (or any part thereof);
 - ii. any and all Losses (including replacement costs which shall be charged at the Owner's standard rates in place from time to time) incurred by the Owner in providing spare parts, replacement units of the Plant and/or carrying out repairs as a result of theft, loss, damage or vandalism of the Plant (whether or not the same is caused by the Hirer or a third party); and
 - iii. any and all Losses suffered by the Owner as a result of any claims by any person whatsoever for injury to a person or property caused by, in connection with or arising out of the use of the Plant by the Hirer (including, but not limited to, the storage, transit, transport, unloading, loading or use of the Plant, whether or not the same is in accordance with the terms of this Contract).
- (c) The Hirer acknowledges, agrees and confirms that it accepts that the Plant will need to be erected in accordance with the Designs after Delivery to the Site and that any estimation of the time the erection of the Plant will take which is given is an indication only and the Owner offers no warranty as to the time it will take the Hirer to erect the Plant as this will vary depending on the Hirer's experience and competence in working with equipment such as the Plant. It is the Hirer's sole responsibility to allow for time to erect the Plant before it is required to carry out the works which it requires the Plant for and the Owner shall have no liability if the Hirer is unable to complete the works within its original timetable if it is unable to erect the Plant in the timescales it has allowed.

9. OWNER'S WARRANTY AND RESPONSIBILITY

- (a) The Owner warrants that, subject to the Hirer complying with its obligations under clause 8, the Plant shall substantially conform to the specification set out in the Quotation and shall be capable of being used in accordance with the Designs. The Owner shall use all reasonable endeavours to remedy any material defect in the Plant arising from a breach of the warranty under this clause 9. (a) which manifests itself during the Hire Period within a reasonable time frame, provided that:
- i. the Hirer notifies the Owner of any defect in writing within two Working Days of the defect occurring or of it becoming aware of the defect;
 - ii. the Owner is permitted to make a full examination of the alleged defect;
 - iii. the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Owner's authorised personnel or a breach by the Hirer of clause 8; and the defect did not arise out of any information, design or any other assistance supplied or furnished by the Hirer or on its behalf (including, but not limited to, the Site Plan and Work Designs).
- (b) As a result of a breach of the warranty given by the Owner at clause 9. (a), the Hirer shall be entitled, as its sole remedy, during the period in which it is not able to use the Plant (or any part thereof) to an appropriate reduction to the Hire Charges which are payable during the period it was not able to use the Plant. For the avoidance of doubt, the Hirer shall not gain a reduction for the whole value of the Hire Charges for all of the Plant during such a period and only for those items of Plant which it cannot actually use during the relevant period.
- (c) The allowance made under clause 9. in respect of the Hire Charges shall be the Hirer's sole and exclusive remedy and the sole and exclusive liability of the Owner in respect of any breach of the warranty at clause 9. (a) and without prejudice to clause 12 below, the Owner shall not be liable to the Hirer for any other sums.
- (d) In consideration of the warranty provided under clause 9. (a) above, all other warranties implied by statute or otherwise are, to the fullest extent possible in law, excluded from application within this Contract.

10. TITLE, RISK AND INSURANCE

- (a) During the Hire Period, the Plant shall at all times remain the property of the Owner and the Hirer shall have no right, title or interest in or to the Plant (save the right to possession and use of the Plant subject to the terms and conditions of this Contract).
- (b) The risk of loss, theft, damage or destruction of the Plant shall pass to the Hirer on Delivery (which shall, for the avoidance of doubt, occur on the arrival of the Plant at the Site and before the Plant is actually unloaded from the vehicle which is to effect collection). The Plant shall remain at the sole risk of the Hirer until Collection of the Plant (which shall, for the avoidance of doubt, occur after the Plant is actually loaded onto the vehicle which is to effect collection) and any further term during which the Plant is in the possession, custody or control of the Hirer ('Risk Period'). During the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:
- i. insurance of the Plant 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 Owner may from time to time nominate in writing;
 - ii. insurance for such amounts as a prudent owner or operator of the Plant would insure for, or such amount as the Owner 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 Plant; and
 - iii. insurance against such other or further risks relating to the Plant as may be required by law, together with such other insurance as the Owner may from time to time consider reasonably necessary and advise to the Hirer.

- (c) All insurance policies procured by the Hirer shall be endorsed to provide the Owner with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Owner's request name the Owner on the policies as a loss payee in relation to any claim relating to the Plant. The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies. The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Owner and proof of premium payment to the Owner to confirm the insurance arrangements.
- (d) The Hirer shall give immediate written notice to the Owner in the event of any loss, accident or damage to the Plant arising out of or in connection with the Hirer's possession or use of the Plant and shall take such action as the Owner reasonably instructs in respect of claiming on the insurance held in accordance with clause 10. (b) and shall keep the Owner informed of the progress of any such claim.
- (e) If the Hirer fails to effect or maintain any of the insurances required under this agreement, the Owner 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 Hirer.

11. LOSS / BREAKAGE OF PLANT

- (a) Each item of Plant specified in the Quotation is hired as a separate unit and save where a breakdown or stoppage is caused by a breach of the warranty under clause 9. (a) above, the breakdown or stoppage of one or more units (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith.
- (b) As each item of Plant specified in the Quotation is hired as a separate unit, the breakage, damage or loss of one or more units will be invoiced to the Hirer at the Owner's current sales rates in place from time to time and the Hirer shall not be entitled to any reduction in the Hire Charges as a result of such breakage, damage or loss. Replacement costs for broken, lost or damaged to Plant which causes the need for a replacement are available on request and the Hirer shall notify the Owner immediately of any broken, lost or damaged units. This clause 11 shall also apply equally to Delivery Cages and Pallets provided by the Owner.

12. LIMITATION OF LIABILITY

- (a) Without prejudice to any other limitation of liability under these Conditions and subject to clause 12 (e) below, the Owner shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Hirer's consequential losses which shall include, but not be limited to;
 - i. loss of profit;
 - ii. loss of use of the Plant or any other asset or facility;
 - iii. loss of production or productivity;
 - iv. loss of contracts with any third party;
 - v. liabilities of whatever nature to any third party; and / or
 - vi. any other financial or economic loss or indirect or consequential loss or damage of whatever nature.
- (b) Whenever the Contract provides that any allowance is to be made against Hire Charges, such allowance shall be the Hirer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of Hire Charges which would otherwise be or become due if the allowance in question had not been made.
- (c) Subject to clause 12. (e) below, the Owner's total liability to the Hirer shall not exceed the Hire Charges actually received by the Owner at the earlier of (i) the time when the Hirer's claim is notified to the Owner; and (ii) when the Hirer should reasonably have been aware of the claim against the Owner, save where the Owner has not received payment of any Hire Charges when the Owner's total liability to the Hirer shall be capped the Hire Charges payable for the Minimum Hire Period applicable to the Contract. For the avoidance of doubt, the Owner's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the agreement.
- (d) Unless the Hirer notifies the Owner that it intends to make a claim in respect of an event within the Notice Period, the Owner shall have no liability for that event. The Notice Period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- (e) For the avoidance of doubt, nothing in these conditions limits or seeks to exclude the Owner's liability for claims of death or personal injury caused by the Owner's negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

13. NOTICE OF ACCIDENTS

If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Hirer to the Owner by telephone and confirmed in writing to the Owner no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Hirer is not bound to fully indemnify the Owner, no admission of liability, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's prior written permission.

14. RE-HIRING ETC.

Neither the Plant nor any part thereof shall be re-hired, sub-let, or lent to any third party without the prior written permission of the Owner. If in breach of this clause 14, the Hirer re-hires the Plant or any part thereof it shall be liable to account to the Owner on demand for all consideration (whether monetary or otherwise) it receives as a result of that re-hire.

15. CHANGE OF SITE

The Plant shall not be moved from the Site without the prior written permission of the Owner.. If any movement of the Plant is agreed in writing with the Owner, the Hirer shall carry out the movement of the Plant strictly in line with the instructions of the Owner and if required, allow the Owner, at the sole expense of the Hirer, to move the Plant itself.

16. RETURN OF PLANT FOR REPAIRS

If during the Hire Period the Owner decides that urgent repairs to the Plant are necessary then it may arrange for such repairs to be carried out on Site or at any location of its nomination. Save where the repairs are necessary because of an action of the Hirer or a breach of its obligations hereunder, in the event that urgent repairs to the Plant are necessary the Owner shall be obliged to replace the Plant with similar Plant if available and the Owner shall pay all transport charges involved. In the event of the Owner being unable to replace the Plant he shall be entitled to terminate the Contract forthwith by giving written notice to the Hirer. If such termination occurs:

- (a) within three months from the commencement of the Hire Period, the Owner shall pay all transport charges involved; or,
- (b) more than three months from the commencement of the Hire Period, the Owner shall be liable only for the cost of reloading and return transport.

17. BASIS OF CHARGING

- (a) Subject to clauses 18. (d) and 19. (b), the Hirer shall be liable to pay the Hire Charges to the Owner in accordance with the terms of this Contract for the entirety of the Hire Period (which shall for the avoidance of doubt include any notice period under clause 19. (a) below and until such time as the Plant is returned to the Owner's named depot or other agreed location).
- (b) The parties agree that this Contract shall be treated as a construction contract for construction operations under the Act and as such the terms of the Act and the Scheme shall apply in full to the Contract in respect of the hire of the Plant by the Hirer from the Owner.
- (c) Unless otherwise agreed in writing by the Owner, odd days at the beginning and at the end of the Hire Period shall be charged at the full weekly or monthly Hire Charge rate (as applicable) set out in the Quotation and the weekly or monthly Hire Charges shall be charged irrespective of the number of hours the Plant is actually in use by the Hirer.
- (d) All Non Credit Account Customers shall be liable to pay the Hire Charges for the Minimum Hire Period and the Security Deposit on receipt of an invoice in respect of the same and at all times before the Delivery of the Plant to Site. Until such time as the sums payable under this clause 17. (d) have been paid by the Hirer as a Non Credit Account Customer, the Owner shall have no obligation to effect Delivery of the Plant to the Hirer.
- (e) After the end of the Minimum Hire Period in respect of Non Credit Account Customers that have paid in advance under clause 17. (d) and from the outset of the Hire Period in respect of Non Credit Account Customers that have for any reason not paid in advance under clause 17. (d) and Credit Account Customers, the Owner shall be entitled to make monthly applications for payment on or around the last Working Day of each calendar month during the Hire Period for the Hire Charges for the preceding month up to and including the date of application and for the period from the date of application to the end of the relevant calendar month.
- (f) After the end of the Hire Period, the Owner shall be entitled to immediately make an application for payment for the period from either (i) the end of the last monthly application under clause 17. (e); or (ii) if no application has been made under clause 17. (e), from the start of the Hire Period, to the final date of the Hire Period.
- (g) The Due Date for payment in respect of any application for payment made by the Owner under clauses 17. (d) or 17. (e) (as applicable), shall be the date on which the Owner makes the application for payment under clauses 17. (d) or 17. (e). For the avoidance of doubt, the provision by the Owner of a VAT invoice to the Hirer shall constitute an application for payment.
- (h) The Final Date For Payment in respect of any application for payment made under clause 17. (d) or 17. (e) (as applicable), shall, save as agreed otherwise in writing between the parties, be 30 days after the relevant Due Date for the application for payment.
- (i) In respect of each application for payment made by the Owner, the Hirer shall be entitled to serve a Payment Notice within 5 days of the relevant Due Date for each application, stating the amount it considers payable by it to the Owner in respect of the relevant application and the basis upon which that sum is calculated. In addition, the Hirer shall also be entitled to serve a Payless Notice stating the amount it considers payable by it to the Owner in respect of the relevant application and the basis upon which that sum is calculated no later than 20 days before the Final Date For Payment. For the avoidance of doubt, if a Payment Notice or Payless Notice fails to state either (i) the amount it considers payable by it to the Owner in respect of the relevant application; and/or (ii) the basis upon which that sum is calculated or is not in writing, it shall not be a valid Payment or Payless Notice under this Contract and shall have no effect under this Contract.
- (j) The Hirer shall be liable to pay the following to the Owner on the Final Date For Payment;
 - i. if the Hirer fails to serve a Payment Notice or Payless Notice, the amount stated in the Owner's application for payment served under clause 17. (d) or 17. (e) (as applicable); or
 - ii. if the Hirer serves a Payment Notice, but does not serve a Payless Notice, the amount stated in the Payment Notice; or
 - iii. if the Hirer serves a Payless Notice (whether or not the Hirer serves a Payment Notice), the amount stated in the Payless Notice.
- (k) Interest on any late payments will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

18. COMMENCEMENT AND TERM OF THE CONTRACT

- (a) The Hire Period shall commence from the time when the Plant leaves the Owner's depot or place where last employed and shall continue until the Plant is received back at the Owner's named depot or other agreed location. For the avoidance of doubt, the Hire Period includes the time Plant is left on site during a Holiday Period.
- (b) Where a Minimum Hire Period is stated in the Quotation, the Hirer shall be obliged to hire the Plant for that Minimum Hire Period and the Hirer shall not be entitled to terminate this Contract during the Minimum Hire Period. For the avoidance of doubt, the Hirer shall remain liable for the Hire Charges throughout the Hire Period whether or not;
 - i. it actually uses the Plant; and
 - ii. it actually retains possession of the Plant throughout the Minimum Hire Period.
- (c) At the end of the Minimum Hire Period or where no Minimum Hire Period is stated, the Hire Period shall be on a rolling weekly or monthly basis (as set out in the Quotation) until the Hirer off hires the Plant by terminating the Contract in accordance with clause 19. The Hirer shall be liable to the Owner for a full week or months Hire Charges (as applicable) in respect of odd days at the beginning or the end of the Hire Period.
- (d) Save where agreed otherwise between the parties, an allowance of one day shall be made each way for travelling time in respect of Delivery and Collection and the Hirer accepts that the Hire Charges shall be fully payable in respect of travel time (whether or not the Plant is used on the day of travelling). If more than one day is properly and unavoidably occupied in transporting the Plant (whether as a result of a breach by the Hirer of this agreement or as a result of an event beyond either parties control), a hire charge at the Owner's standard rates shall be payable for such extra time.
- (e) If the Plant is not made available for Collection in accordance with these Conditions and as agreed from time to time between the parties;
 - i. such Plant shall be deemed with immediate effect to be placed back on hire for the minimum period of a week at the Owner's standard rates in place from time to time;
 - ii. the Hire Period shall not be deemed to have ended and shall be on a rolling weekly basis; and
 - iii. these terms in their entirety shall apply to the extension of the Hire Period under this clause 18. (e).
- (f) Before Collection of the Plant occurs, the Hirer shall clean and where necessary, decontaminate the Plant to ensure it is returned in good working condition to the Owner. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner should the Hirer fail to comply with this clause.

19. HIRER'S NOTICE OF TERMINATION OF CONTRACT

- (a) After the end of the Minimum Hire Period or immediately where there is no Minimum Hire Period, the Contract shall be terminable by either party giving the other three days notice in writing. Oral notice given by the Hirer to the Owner shall not be deemed to constitute a valid notice under this clause 19.
- (b) Upon service of a notice under clause 19. (a), the Owner and the Hirer shall agree a date and time slot for Collection of the Plant when the Hirer shall make the Plant (or if applicable the part thereof to be Collected) available for Collection and shall comply with its obligations hereunder in respect of Collection. The Owner shall use

- its reasonable endeavours to collect the Plant as soon as practicable and in any event within three days of the expiry of the notice to terminate ('Collection Period'). If the Owner is unable to facilitate collection within the Collection Period and the Hirer has complied with all of its obligations in respect of the Collection of the Plant, the Hirer shall not be liable to pay any Hire Charges for the period it retains the Plant after the expiry of the Collection Period.
- (c) For the avoidance of doubt, notwithstanding any notice to terminate being served by the Hirer under clause 19. (a) or any liability of the Hirer in respect of the Hire Charges ending under clause 19. (b), all the Hirer's obligations in respect of the Plant under this Contract shall continue until the Plant has been Collected by the Owner.
 - (d) Should the Hirer fail to make the Plant or any part thereof available for Collection by the Owner at the time agreed between the parties after the three day notice has expired, in addition to the Hirer's liability under clause 4 and 5, the Hirer's obligations in respect of the Plant or any part thereof under this Contract shall continue until the Plant has been Collected by the Owner and the Hirer shall remain liable to the Owner for the Hire Charges until the end of the Hire Period. For the avoidance of doubt, where the Hirer gives a notice pursuant to clause 19. (a) but subsequently and with the consent of the Owner, withdraws such notice, the obligations under this Contract shall continue to apply and the requirements of this clause 19 will apply to any later termination of the Contract.
 - (e) If the Hirer terminates the Contract before the Hire Period commences, then the Hirer is liable for;
 - i. all reasonable costs and charges incurred by the Owner or to which the Owner is committed at the time of termination; and
 - ii. save where the Owner is able to re-hire the Plant with a third party, the Owner's loss of profit for the expected Hire Period of the Contract.

20. OWNER'S RIGHT TO TERMINATE AND CONSEQUENCES OF THE OWNER'S TERMINATION

- (a) Without affecting any other right or remedy available to it, the Owner may terminate this agreement with immediate effect by giving written notice to the Hirer if:
 - i. the Hirer commits a material breach of any term of this agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so;
 - ii. the Hirer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), 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;
 - iii. the Hirer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - iv. the Hirer's financial position deteriorates to such an extent that in the Owner's opinion the Hirer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- (b) For the purposes of clause 20. (a) **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Owner would otherwise derive during the term of this agreement from:
 - i. a substantial portion of this agreement; or
 - ii. any of the obligations set out in clauses 6, 8, 10, 11, 13, 14, 15, 17, 22 and 27.
- (c) Upon termination of this agreement under clause 20. (a);
 - i. the Owner's consent to the Hirer's possession of the Plant shall terminate and the Owner may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Plant and for this purpose may enter the Site or any premises at which the Plant is located; and
 - ii. without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the Owner on demand:
 - 1. all Hire Charges (including for the period up to recovery of the Plant by the Hirer) and other sums payable but unpaid at the date of such demand together with any interest accrued;
 - 2. any costs and expenses incurred by the Owner in recovering the Plant and/or in collecting any sums payable under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs);
 - 3. a sum equal to the whole of the Hire Charges that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of any applicable Minimum Hire Period.
- (d) The sums payable pursuant to clause 20. (c) ii. shall be agreed compensation for the Owner's loss and shall be payable in addition to the sums payable pursuant to any other clause of this agreement.
- (e) 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.

21. FORCE MAJEURE

- (a) Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.
- (b) For the avoidance of doubt, a failure of the Hirer's sub-contractors or suppliers shall not constitute an event which is beyond the reasonable control of the Hirer for the purpose of clause 21. (a). However, a failure of the Owner's sub-contractors, agents or suppliers will constitute an event which is beyond the reasonable control of the Hirer for the purpose of clause 21. (a).

22. INTELLECTUAL PROPERTY RIGHTS

- (a) The Hirer agrees that, save as set out in clause 22. (b), it shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Owner in respect of or in connection with the Plant or the Designs and so as to protect the Owner's Intellectual Property Rights in the Plant, the Hirer (who acknowledges the restrictions in this clause 22 are reasonable in all circumstances) agrees and undertakes to the Owner that it shall not (whether directly or indirectly) during the Hire Period and for a period of five years after the end of the Hire Period;

- i. contract with any third party or procure any third party to manufacture products which are the same or of a similar nature to the Plant;
 - ii. attempt to reverse engineer or procure any third party to reverse engineer products which are the same or of a similar nature to the Plant; or
 - iii. in any way infringe on the Intellectual Property Rights of the Owner in the Plant.
- (b) So far as is necessary for the Hirer to be able to use the Plant during the Hire Period and subject always to clause 22. (a), the Owner shall grant the Hirer an exclusive, royalty free, revocable licence to use the Owner's Intellectual Property Rights in the Plant and the Designs during the Hire Period. This licence will automatically terminate at the end of the Hire Period (howsoever that occurs).
- (c) In so far as reasonably necessary to allow the Hirer to use the Plant, the Hirer shall be entitled to grant a sub-licence in respect of the Intellectual Property Rights in the Goods. However, any sub-licence granted under this clause 22. (c) shall be granted by the Hirer on terms applicable to the relevant third party to whom the sub-licence is granted which are no less onerous than this clause 22. and shall acknowledge the Owner's ownership of the Intellectual Property Rights in the Plant.
- (d) Where the Hirer acquires, by operation of law, title to any Intellectual Property Rights of the Owner in respect of or in connection with the Plant and this acquisition is inconsistent with the allocation of title in respect of the Intellectual Property Rights set out in clause 22 (a), such Intellectual Property Rights shall automatically be assigned by the Hirer to the Owner under this clause 22. (c) without the need for any further action by the Owner or the Hirer.
- (e) The Hirer shall, at all times during and after the completion of the Hire Period, indemnify the Owner and keep the Owner indemnified against all Losses suffered by the Owner (howsoever those are incurred) as a result of the Hirer's breach of this clause 22. The Hirer acknowledges that damages alone may not be an adequate remedy for its breach of this clause 22 and as such, the Owner shall be entitled to take such action (including, but not limited to, injunctive proceedings) so as to protect its rights in the Intellectual Property Rights in the Goods.

23. APPLICABLE LAWS AND REGULATIONS

- (a) The Hirer will be responsible for compliance with all Applicable Laws and Regulations that apply to the use of the Plant during the Hire Period.
- (b) The Hirer shall indemnify the Owner against any Losses that the Owner may become liable for or it suffers as a result of the operation or use of the Plant during the Hire Period.

24. DISPUTE RESOLUTION

- (b) Both parties to the Contract have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme (or any amendment or re-enactment thereof for the time being in force) will apply. The person (if any) specified in the Contract to act as adjudicator may be named in the Quotation, but where no person is specified, the nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being.
- (b) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement (and/or, under Scots law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement or deduction. Where, under Scots law, the Owner, the Hirer, or the adjudicator, wishes to register a decision of the adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.

25. LATE PAYMENTS

The Owner reserves the right to charge the Hirer for the late payment of any outstanding invoices under the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent legislation.

26. CONFIDENTIAL INFORMATION

- (a) Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party
- (b) Each party may disclose the other party's confidential information:
 - i. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 27; and
 - ii. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

27. ASSIGNMENT AND OTHER DEALINGS

This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

30. ENTIRE AGREEMENT

- (a) This agreement 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 this agreement 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 this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

31. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

32. NO PARTNERSHIP OR AGENCY

- (a) Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- (b) Each party confirms it is acting on its own behalf and not for the benefit of any other person.

33. NOTICES

- (a) Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
 - i. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - ii. sent by email to the address specified in the Quotation or if no address is stated for the Hirer to the email address of the party to whom the Quotation was sent to.
- (b) Any notice shall be deemed to have been received:
 - i. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address (if evidence of the same is kept); and
 - ii. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; and
 - iii. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under this agreement is not valid if sent by fax.

34. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

35. SEVERABILITY

If any of these clauses are held to be unlawful, void or unenforceable, then that clause will be deemed severable and will not affect the validity and enforceability of the remaining clauses, to the extent permitted by law.

36. GOVERNING LAW

This agreement 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 law of England and Wales.

37. 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 this agreement or its subject matter or formation.

SALES T & C'S

1. INTERPRETATION

(a) Definitions:

"Conditions" the terms and conditions set out in this document as amended from time to time in accordance with clause 13. (d).

"Contract" the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions and which also incorporate the Quotation.

"Credit Account" means a credit account for the purchase the Goods given by the Supplier to a Customer which is subject to these terms and conditions.

"Credit Account Customers" means those Customers who hold a Credit Account with the Supplier in respect of the purchase of the Goods.

"Customer" the person or firm who purchases the Goods from the Supplier and as stated in the Quotation.

"Delivery" means the physical transfer of possession of the Goods to the Customer at the Delivery Location which shall occur in accordance with clause 5 and for the avoidance of doubt, before it has been unloaded by the Customer.

"Delivery Cage" means the cage in which the Goods is Delivered.

"Delivery Location" shall be the place agreed between the parties from time to time where the Goods are to be Delivered by the Supplier.

"Force Majeure Event" an event or circumstance beyond a party's reasonable control.

"Goods" the goods (or any part of them) set out in the Quotation.

"Industry Best Practice" the exercise of **the best standards of skill, diligence, prudence and foresight which would be expected from a skilled and experienced person engaged in the same type of industry as the Customer (including, but not limited to, operating in accordance with all Applicable Laws and Regulations and taking due account of any applicable guidelines from any relevant authority).**

"Intellectual Property Rights" patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Losses" all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation) and all other interest, penalties and other costs and expenses (howsoever incurred).

"Non Credit Account Customers" those Customers who do not hold a credit account with the Supplier in respect of the purchase of the Goods.

"Pallet" means the containers that the Supplier may provide the Goods in.

"Order" the Customer's order for the Goods by way of acceptance of the Supplier's Quotation (in whatsoever format that acceptance is provided in and whether in writing or orally).

"Specification" any specification for the Goods as set out in the Quotation.

"Supplier" Fast-Form Systems Ltd (registered in England and Wales with company number 08636930) and whose registered office is at Unit 1 Omega Business Park, Estate Road 6, South Humberside Industrial Estate, Grimsby, South Humberside, DN31 2TG.

"Waiting Time" shall have the meaning set out in clause 5. (d).

"Working Day" shall be from 8.00 am to 4.30 pm, Monday to Friday on any day on which the banks in England are open.

- 1.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 A reference to writing or written includes emails.

2. BASIS OF CONTRACT

- 2.1 All Credit Account Customer acknowledge, agree and confirm that by opening a Credit Account with the Supplier, they agree that these Conditions shall apply to the exclusion of all other terms and conditions in respect of each and every individual Contract the relevant Customer enters into with the Supplier in respect of the purchase of the Goods. The remainder of this clause 2 shall apply to any attempt by a Credit Account Customer to incorporate any other terms and conditions into individual Contracts of purchase in respect of the Goods.
- 2.2 The Quotation constitutes an offer by the Supplier to sell the Goods in accordance with these Conditions.
- 2.3 By accepting the Quotation (howsoever that occurs) or by opening a Credit Account, the Customer accepts that no terms, conditions or warranties other than as specifically set forth in these Conditions and the Quotation shall be deemed to be incorporated or to form part of the Contract or shall otherwise govern the relationship between the Supplier and the Customer in relation to the purchase of the Goods. This excludes all other terms or conditions which the Customer may seek to apply under any Order or acknowledgement or acceptance or similar document and supersedes all prior negotiations, representations or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by the Supplier.
- 2.4 The Customer may, for its own administrative convenience, issue its standard terms and conditions to the Supplier, however the Customer acknowledges, agrees and confirms that its standard terms and conditions shall function only as an acceptance of the Quotation, subject to these Conditions and shall otherwise have no contractual effect. To the extent that any other terms and conditions apply to the agreement between the Customer and Supplier by operation of law or otherwise, 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.
- 2.5 The Customer is responsible for ensuring that the terms of the Quotation and the Specification of the Goods contained therein, are complete and accurate.
- 2.6 Any samples, drawings, descriptive matter or advertising produced by the Supplier is produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.7 A Quotation shall only be valid for a period of 60 Business Days from its date of issue.

3. GOODS

- 3.1 The Goods are described in the Supplier's Quotation.

3.2 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, 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 and other professional costs and expenses) suffered or incurred by the Supplier 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 specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the agreed specification of the Goods contained in if required by any applicable statutory or regulatory requirements and the Supplier shall have no liability to the Customer in respect of such an amendment.

4. UNLOADING OF THE GOODS

4.1 The Customer shall be responsible for and undertakes to (at its own cost);

- i. provide the Supplier with unobstructed access to the Delivery Location at the time agreed between the parties so as to facilitate the Delivery of the Goods (including unloading of the same) which shall occur by way of use of a heavy goods vehicle by the Supplier unless agreed otherwise between the parties in writing;
- ii. provide the Supplier with adequate legal parking (including procuring and providing any necessary permit) for a heavy goods vehicle (or such other vehicle agreed between the parties in writing) at the Delivery Location to facilitate the Delivery of the Goods (including unloading of the same); and
- iii. unless otherwise agreed in writing, unload the Goods at Delivery from the Supplier's delivery vehicle in accordance with this clause 4.

For the avoidance of doubt, if the Customer fails to comply with its obligations under this clause 4. (a) the Supplier shall be entitled to immediately abort any Delivery and the Customer shall be charged in full for such an aborted Delivery and for any further Deliveries carried out by the Supplier (with such charges to include, but not be limited to any charges for illegal parking the Supplier (or its representatives or sub-contractors) incur during Delivery).

4.2 The Supplier will automatically use a heavy goods vehicle for Delivery and the Customer shall ensure it will comply with clause 4. (a) in respect of this vehicle type. The Customer warrants that the Delivery Location is suitable for delivery by a heavy goods vehicle and to the extent the Supplier fails to notify the Supplier that the Delivery Location is not suitable for a heavy goods vehicle and arrange an alternative vehicle for Delivery, it shall be liable for any aborted Delivery costs incurred by the Supplier. The Customer shall also be liable for any additional costs incurred by the Supplier in using any other vehicle type as a result of the Delivery Location being unsuitable for Delivery or Collection by a heavy goods vehicle.

4.3 Without prejudice to the Customer's primary responsibility for unloading the Goods at Delivery, any personnel supplied by the Supplier for unloading the Goods shall be deemed to be under the direction and control of the Customer. Such personnel shall for all purposes in connection with their carrying out the unloading of the Goods be regarded as the servants or agents of the Customer and without prejudice to any of the provisions of clause 11, the Customer shall be solely responsible for all claims arising in connection with unloading of the Goods by, or with the assistance of, such personnel. If the Supplier's personnel provide services in respect of loading the Goods and save where it expressly stated that such a service is included within the Hire Charges, the Supplier shall be entitled to charge at its standard rates in place from time to time for each individual that is engaged in providing those services to the Customer.

4.4 Unloading at Delivery must not be carried out by hand and must be carried out by the use of a lorry loader, hiab or forklift (as applicable). For the avoidance of doubt, Delivery by the Supplier does not include the provision of a lorry loader, hiab or forklift or any personnel with the requisite qualifications to operate such equipment. Provision of a lorry loader, hiab or forklift and personnel can be provided on request, but the Supplier shall be entitled to charge the Customer for use of the same at the Supplier's standard rates in place from time to time. Use of any of the Supplier's equipment (including tail lifts, trolley jacks or forklifts) during the Delivery of the Goods shall be at the Customer's risk and it is the Customer's responsibility to oversee the Supplier's personnel in accordance with clause 4. (c) above should they be requested to assist.

4.5 The Customer agrees and warrants it has the capability to lift the Delivery Cages and/or Pallets by the use of appropriate slings underneath the Delivery Cages and/or Pallets and the Customer agrees not to lift the Delivery Cages in any other manner (including by the bars) as this will cause damage. If the Customer has any doubt as to the unloading or loading method to be used for the Delivery Cages it should contact the Supplier immediately for instructions and any damaged Delivery Cages and/or Pallets will be charged to the Customer at a rate of £250.00 (plus any applicable VAT) per Delivery Cage and/or Pallet. In addition, the Customer acknowledges that the Delivery Cages and/or Pallets are the property of the Supplier at all times and if left at the Delivery Location after Delivery, shall form part of the Goods which is being hired to the Customer and these terms shall apply in their entirety to such a hire throughout the Hire Period.

5. DELIVERY

5.1 Save as set out in clause 4 above in respect of unloading the Goods, Delivery of the Goods shall be made by the Supplier and the Supplier shall use all reasonable endeavours to effect the Delivery of the Goods to the Delivery Location by the date and time agreed between the parties. However, time shall not be of the essence in respect of Delivery.

5.2 The Customer and the Supplier shall agree a time slot for the Delivery of the Goods and if as a result of the Customer failing to comply with its obligations hereunder, the Supplier is unable to effect the Delivery within the agreed time slot then the Supplier (or their agents) shall be entitled to abort the Delivery and the Customer shall be charged in full for such an aborted Delivery and for any further Deliveries carried out by the Supplier.

5.3 The Supplier shall be entitled at any time and without liability to the Customer to change any agreed Delivery date and time slot and the Customer shall ensure that it complies with its obligations hereunder in respect of any revised Delivery date or time slot. The Customer shall not be entitled to change any Delivery date or time once agreed without the written consent of the Supplier and the Customer shall be liable for any aborted Delivery costs incurred by the Supplier in the event of such a change.

5.4 In addition and without prejudice to clause 5. (b) and (c) above, if the unloading of the Goods at Delivery has not been completed within 40 minutes of the arrival at Delivery Location of the Supplier's representatives or agents who are to effect Delivery ('Waiting Time'), then the Customer acknowledges that after the Waiting Time has lapsed, at the discretion of the Supplier;

5.4.1 the Customer will be charged £50 per 30 minutes or part thereof that the Supplier's representatives or agents wait at the Delivery Location to effect the Delivery; and/or

5.4.2 the Delivery may be aborted by the Supplier's representatives or agents at any time meaning the Customer shall be charged in full for such aborted Delivery (including, but not limited to any charges under clause 4. (d) i. above) and for the cost of any further Deliveries carried out by the Supplier.

5.5 Deliveries charges quoted by the Supplier are wholly dependent on all Goods being Delivered in one Delivery. Any part Deliveries will result in the Customer being charged for any additional Deliveries the Supplier carries out. A quotation is available for part Deliveries on request.

5.6 The Customer shall procure that a duly authorised representative of the Customer (who the Customer warrants shall have authority to bind the Customer) shall be present at the Delivery of the Goods. Unless notification in writing to the contrary is received by the Supplier from the Customer in the case of Goods supplied within one Working Day of Delivery of the Goods, the Goods shall be deemed to be in good order (save for either an inherent fault or a fault not ascertainable by reasonable examination) and to the Customer's satisfaction.

5.7 The Customer shall be responsible for use of the Goods in a workmanlike manner within the manufacturer's and the Supplier's rated capacity and in accordance with the manufacturer's and/or the Supplier's recommendations.

6. QUALITY

- 6.1 The Supplier warrants that on Delivery, the Goods shall:
- 6.1.1 conform in all material respects with the Specification;
 - 6.1.2 be free from material defects in design, material and workmanship; and
 - 6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 6.2 Subject to clause 6 (c), if:
- 6.2.1 the Customer notifies the Supplier of any defect in writing within one Business Day of the Delivery of the Goods;
 - 6.2.2 the Supplier is permitted to make a full examination of the alleged defect;
 - 6.2.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel;
 - 6.2.4 the defect did not arise out of any information, design or any other assistance supplied or furnished by the Customer or on its behalf; and
 - 6.2.5 the defect is not directly attributable to defective material, workmanship or design;
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 6 (a) in any of the following events:
- 6.3.1 the Customer fails to comply with clause 6 (b);
 - 6.3.2 the Customer makes any further use of such Goods after giving notice in accordance with clause 6 (b);
 - 6.3.3 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) best industry practice regarding the same;
 - 6.3.4 the defect arises as a result of the Supplier following any description, drawing, design or specification supplied by the Customer;
 - 6.3.5 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 6.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 6.3.7 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6 (a).
- 6.5 In consideration of the warranty given by the Supplier at clause 6 (a), all other warranties implied by statute (including, but not limited to, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979) or otherwise are, to the fullest extent permitted by law, excluded from implication within the Contract.
- 6.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of Delivery which shall occur in accordance with clause 5 and for the avoidance of doubt shall occur before the unloading is carried out by the Customer.
- 7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
 - 7.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 10 (a); and
 - 7.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 Subject to clauses 7. (e) and (g), the Customer may resell the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods.
- 7.5 However, if the Customer resells the Goods before that time:
- 7.5.1 it does so as principal and not as the Supplier's agent;
 - 7.5.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs;
 - 7.5.3 the Customer shall hold any sums it receives as a result of such a sale on trust for the Supplier and shall pay those sums to the Supplier immediately and on demand; and
 - 7.5.4 the Customer shall indemnify the Supplier for any Losses (howsoever incurred) it suffers as a result of the Customer's use or resale of the Goods.
- 7.6 Subject to clause 7. (g), the Customer may use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer uses the Goods before that time it shall do so strictly in accordance with the Supplier's guidance and instructions from time to time and in accordance with industry best practice in respect of the Goods. In addition, the Customer shall indemnify the Supplier for any Losses (howsoever incurred) it suffers as a result of the Customer's use of the Goods before title has passed to the Customer.
- 7.7 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10 (a), then, without limiting any other right or remedy the Supplier may have:
- 7.7.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 7.7.2 the Supplier may at any time:
 - (a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. PRICE AND PAYMENT

- 8.1 The price of the Goods shall be the price set out in the Quotation, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 8.2 The Supplier may, by giving notice to the Customer at any time up to 2 Business Days before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 8.2.2 any request by the Customer to change;
- (a) the Delivery date(s); or
- (b) the Delivery Location less than 48 hours before the agreed date for Delivery; or
- (c) the quantities or types of Goods ordered; or
- (d) the Specification;
- 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.3 The price of the Good excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 8.4 In respect of Non Credit Account Customers, the Supplier may invoice the Customer on receipt of the Order and the relevant Customer shall be liable to pay the invoice on receipt of the same from the Supplier. The Supplier shall be under no obligation to Deliver the Goods until such time as the Customer has paid the invoice in full in cleared funds into the Supplier's nominated bank account.
- 8.5 In respect of Credit Account Customers, the Supplier may invoice the Customer for the Goods on or at any time after the completion of Delivery.
- 8.6 Save where agreed otherwise, where the Customer is a Credit Account Customer and has been invoiced under clause 8. (d), the relevant Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier and time for payment is of the essence.
- 8.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time, save where the base rate is 0 where interest shall accrue at 4%. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9. INTELLECTUAL PROPERTY

- 9.1 The Customer agrees that, it shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier in respect of or in connection with the Goods and so as to protect the Supplier's Intellectual Property Rights in the Goods, the Customer (who acknowledges the restrictions in this clause 9 are reasonable in all circumstances) agrees and undertakes to the Supplier that it shall not (whether directly or indirectly) for a period of five years after the date of Delivery;
- 9.1.1 contract with any third party or procure any third party to manufacture products which are the same or of a similar nature to the Goods;
- 9.1.2 attempt to reverse engineer or procure any third party to reverse engineer products which are the same or of a similar nature to the Goods; or
- 9.1.3 in any way infringe on the Intellectual Property Rights of the Supplier in the Goods.
- 9.2 So far as is necessary for the Customer to be able to use or re-sell the Goods and subject always to clause 9 (a), the Supplier shall grant the Customer an exclusive, royalty free, revocable licence to use the Supplier's Intellectual Property Rights for the use or re-sale of the Goods. The Supplier shall be entitled to revoke the licence granted under this clause 9 (b) without liability to the Customer at any time and for any reason as it sees fit.
- 9.3 In so far as reasonably necessary to allow the Customer to re-sell or use the Goods, the Customer shall be entitled to grant a sub-licence in respect of the Intellectual Property Rights in the Goods. However, any sub-licence granted under this clause 9 (c) shall be granted by the Customer on terms applicable to the relevant third party to whom the sub-licence is granted which are no less onerous than this clause 9 and shall acknowledge the Supplier's ownership of the Intellectual Property Rights in the Goods.
- 9.4 Where the Customer acquires, by operation of law, title to any Intellectual Property Rights of the Supplier in respect of or in connection with the Goods and this acquisition is inconsistent with the allocation of title in respect of the Intellectual Property Rights set out in that clause 9 (a), such Intellectual Property Rights shall automatically be assigned by the Customer to the Supplier under this clause 9 (d) without the need for any further action by the Supplier or the Customer.
- 9.5 The Customer shall, at all times, indemnify the Supplier and keep the Supplier indemnified against all Losses suffered by the Supplier as a result of the Customer's breach of this clause 9. The Customer acknowledges that damages alone may not be an adequate remedy for its breach of this clause 9 and as such, the Supplier shall be entitled to take such action (including, but not limited to, injunctive proceedings) so as to protect its rights in the Intellectual Property Rights in the Goods.

10. TERMINATION

- 10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of that party being notified in writing to do so;
- 10.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), 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;
- 10.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

- 10.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10 (a) i. to clause 10 (a) iv., or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence; or
- 11.1.2 fraud or fraudulent misrepresentation; or
- 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 11.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 11.2 Subject to clause 11. (a);
- 11.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 11.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the payment actually received by the Supplier for the Goods, save where no sums have actually been received by the Supplier when its liability shall be capped at the price of the Goods set out in the Quotation.

12. FORCE MAJEURE

- (a) Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 10 Business Days, the party not affected may terminate this Contract by giving 10 Business Days written notice to the affected party.
- (b) The Customer accepts that the failure or delay of its sub-contractors, agents, or otherwise, in performing any of its obligations under this Contract is not something beyond the Customer's reasonable control for the purpose of clause 12.
- (c) The failure or delay of the Supplier's sub-contractors, agents, or otherwise, in performing any of the Supplier's obligations under this Contract is something beyond the Supplier's reasonable control for the purpose of clause 12.

13. GENERAL

13.1 Assignment and other dealings.

- 13.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

13.2 Confidentiality.

- 13.2.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 13. (b) 13.2.2. For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- 13.2.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives 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 or advisers to whom it discloses the other party's confidential information comply with this clause 13. (b) ii. 13.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 13.2.3 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 this agreement.

13.3 Entire agreement.

- 13.3.1 This 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.
- 13.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

13.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 13.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 13.6 **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-provision 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.
- 13.7 **Notices.**
- 13.7.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or by email (but not by fax).
- 13.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13 (g) i.; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, the next Business Day after transmission.
- 13.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 13.9 **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 law of England and Wales.
- 13.10 **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 this Contract or its subject matter or formation.

By opening an account with us you are deemed to have read and been provided a copy of the Terms and Conditions listed above and by signing the Order / Rental Agreement or accepting delivery, all employees of the company / client are agreeing to be bound by these conditions, subcontractor or agents agree to be bound by both the Terms and Conditions Listed and also the terms of the Rental Agreement.

Acceptance of the Equipment is acceptance of our terms and conditions.