

# **STANDARD TERMS AND CONDITIONS OF HIRE**

## **1.0 Definitions**

- 1.1 The company firm or person letting the equipment on hire being the owner, is hereinafter referred to as 'we' or 'us' and this expression includes their successors.
- 1.2 The company firm or person taking the owner's equipment on hire is hereinafter referred to as 'you' and this expression includes their successors.
- 1.3 'Equipment' shall include any machine or part thereof and any attachments or fittings or replacements or any other item hired under this Agreement.

## **2.0 Letting**

### **2.1 Duration of Letting**

- 2.1.1 We are letting and you are taking on hire for the purposes of your business the Equipment (including any replacement of and additions to it) for the period of hire as specified. The Agreement will continue unless notice is given in accordance with clause 6 of this Agreement. The hiring will start on the Agreement date and will continue (subject to termination by us under clause 6) for a minimum period equal to the Minimum Period of Hire (hereinafter referred to as MPH) stated and thereafter until terminated by either party giving 7 days written notice to the other (to expire no earlier than the last day of the MPH).
- 2.1.2 In the event that you are an unincorporated body and your entry into the Agreement is governed by the Consumer Credit Act 1974, then the hiring under the Agreement shall be for the Minimum Period of Hire and you are not required to give notice to terminate the hiring.

### **Your Obligations**

#### **Payment**

2.2 You shall pay the rentals and the cost of transport to and from s specified in the Agreement and (where applicable) the associated insurance and licensing effected by us pursuant to clauses 2.7 and 2.8 and (together with Value Added Tax) punctually in accordance with the Agreement without previous demand, only to us unless with prior written consent. Time for payment is of the essence. If payment is made by post, it will be at your risk.

#### **Loss or damage**

2.3 You shall accept full responsibility to us for loss of or damage to the Equipment for whatever reason (fair wear and tear excepted) from the time the Equipment is delivered to site until it is removed from the site by us, or on our instructions. Without prejudice to the generality of the foregoing, you shall be responsible for the safe-keeping of the Equipment, and its return to us in a condition equal to that in which it was delivered to you. In addition you may not pledge or permit any lien to be created on the Equipment whilst the Equipment is on site during any period prior to the commencement of the period of hire or after whilst the Equipment is awaiting collection.

#### **Inspection and Identification**

2.4 You shall allow us, or any agent appointed by us, access to inspect the Equipment (and if so required by us, allow us to indicate our ownership of the Equipment) and to adjust, repair or replace the Equipment, and you shall not remove or alter or permit to be removed or altered any identification or registration numbers or marks upon it.

#### **Modification of Equipment**

2.5 You shall not modify or alter the Equipment except with prior written agreement from us and at your expense, but if under any statutory enactment the Equipment has to be modified, the modification shall be at your expense.

#### **Movement and Possession of Equipment**

2.6 You shall keep the Equipment in your sole possession at the site specified in the Agreement and in any event not without our prior written consent permit it to be removed from the site and inform us of its location at any time we may require and not allow the levy of any distress or execution against the Equipment (nor in Scotland, allow any diligence to be done on the Equipment), nor sell, assign, mortgage, charge or sub-let the Equipment or any interest in it or the benefit of this Agreement.

#### **Control of Equipment**

##### **2.7**

2.7.1 The Equipment shall not come within your ownership but shall at all times after delivery to the site be under your direction or control and you shall only allow it to be used for the purposes and in places for which it is suitable, and in a skillful, safe and workmanlike manner, and within its manufacturer's rated capacity. If the Equipment requires recovery for any reason, you shall be responsible for all costs incurred in its recovery.

2.7.2 You shall employ a fully trained and licensed operator (not being less than 18 years of age) capable of operating the Equipment in a safe and proper Manner.

2.7.3 You shall not use or cause or permit any other person to use the Equipment on any public road without having obtained our prior written consent and where such consent is given you shall ensure that the driver holds a valid British driving licence including for use of the equipment on the public road. The cost of such licence shall be at your expense.

#### **Insurance**

2.8 You shall keep the Equipment insured at its full replacement value (as detailed in the Agreement) with full comprehensive cover and with insurers approved by us (such approval not to be unreasonably withheld) and reimburse us on demand any premium due but unpaid and which we elect to pay on your behalf and to fully insure with such insurers in respect of all your liability (on an indemnity basis) to us under this Agreement and in respect of your liability to third parties relating to the Equipment or its use, all at your expense, and you shall:-

- Produce the policy or policies effected hereunder for inspection by us on demand, and
- Hold the proceeds of any claim under the said policy or policies in trust for us and apply such proceeds as we may direct.

And in the event that we agree any modification or restriction in the insurance cover or the Equipment is not found to be insured at all or not in its full replacement value or if the insurers for any reason repudiate any claim you shall indemnify us against all loss sustained by us.

#### **Indemnities**

2.9 As obligations surviving the termination of this Agreement and notwithstanding your obligation under clause 2.8, you shall indemnify us against all loss, damages, costs and expenses suffered or incurred by us because of any third party claim (howsoever arising) out of the state, condition, letting or use of the Equipment or arising out of loss or damage to the Equipment (howsoever caused) and you shall notify us immediately of any loss of or material damage to the Equipment.

#### **Return of Plant**

2.10 Keep the Equipment free of all liens and distrains and return it at your expense on the expiry or sooner termination of the hire to us at such address as we may notify to you or to such other person as we may specify.

## **3.0 FURTHER STIPULATIONS**

### **Late Payment**

3.1 In the event of non-payment or late payment in excess of 14 days by you of any sum due under the Agreement, you shall forthwith (without prejudice to any other remedy we may have) pay to us any sums overdue and any costs and expenses incurred by us in recovering payment together with additional rental equivalent to interest, on a day to day basis, at the rate of 5% above the base rate of Barclays Bank Plc from time to time in force, from the due date until the date of actual payment (whether before or after any judgement).

### **Limits of Liability**

3.2 We will at your request and cost and on our terms transfer to you, as far as possible, the benefits of any manufacturer's and supplier's express warranties of fitness and performance of the Equipment given to us.

3.2.1 Except as stated in sub-clause 3.2.2 below, if you acknowledge that you have selected the Equipment from a supplier and have reviewed the supplier's terms and conditions of sale which are acceptable and satisfactory to you and which permit (pursuant to the Contracts (Rights of Third Parties) Act 1999) you to exercise rights against the supplier in respect of the Equipment, we shall have no liability whatsoever to you in respect of the state, condition, fitness for purpose or satisfactory quality of the Equipment and that you shall exclusively pursue all claims relating to the same against the said supplier.

3.2.2 If in making this agreement you deal as a consumer or if in Scotland this agreement is a consumer contract (within the meanings of Sections 12 and 25 of the Unfair Contract Terms Act 1977) but not otherwise, the Equipment is hired to you with the benefit of terms as to title, correspondence with description, fitness for purpose and merchantable and/or satisfactory quality implied by the Supply of Goods and Services Act 1982 (as amended).

#### **3.2.3**

(a) The following provisions set out our entire liability, including any liability for the acts or omission of our employees, agents and sub-contractors to you in respect of:

- Any breach of our contractual obligations arising under the Agreement; and
- Any representations, statement or tortious act or omission including negligence arising under or in connection with the Agreement

(b) We shall not be liable for any loss or damage sustained or incurred by you or any third party (including without limitation, any loss of use of the Equipment or Loss) resulting from any breakdown or defect in the Equipment (whether latent or apparent) howsoever caused.

(c) Notwithstanding anything contained in the Agreement we shall not be liable to you for loss of profits, contracts or earnings or goodwill or any type of special indirect or consequential loss (including loss or damage suffered by you as a result of an action brought by a third party) whether arising from negligence, breach of contract or otherwise, even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the same.

(d) Except in respect of injury to or death of any person resulting from our negligence, any liability under sub-clauses 3.2.3(a), (b) and (c) above, in respect of each event, shall not in aggregate exceed the amount(s) payable by you under the Agreement or £10,000 of any proven loss, whichever shall be the lesser amount.

(e) If a number of events of default give rise essentially to the same loss then these shall be regarded as giving rise to only one claim under the Agreement.

3.2.4 You shall indemnify us and keep us fully effectively indemnified against any loss or damage (including costs incurred by us) to any property or injury to or death of any persons caused in whole, or in part, or arising out of any negligent act or omission or willful misconduct by you, your employees, agents or subcontractors or by any breach of your contractual obligations.

3.3 The maximum hours permitted usage of the equipment is 20 hours per week unless the parties agree otherwise in writing. Any usage above 20 hours per week shall be charged at an additional 2% of the weekly hire rate per hour.

## **4.0 FULL MAINTENANCE**

4.1 We will, subject to clause 4.2, at our expense:-

4.1.1 Carry out the routine servicing and inspection of the Equipment at such intervals as we may reasonably decide including the adjustment or replacement of any defective working parts where caused by standard operating fair wear and tear discovered during such maintenance or service work;

4.1.2 Repair or replace any parts (other than consumables such as but not limited to light bulbs, wiper blades, tyres and forks), except where in our reasonable opinion the part has been worn or damaged due to your failing to take reasonable care of the Equipment. Our decision shall be conclusive and binding to you and in this event, the cost of the repair will be charged to you.

4.1.3 Use all reasonable endeavours to supply spare/replacement components (other than consumables) required to maintain the Equipment, using such components (whether service exchange parts or new parts) as we consider necessary.

4.1.4 Undertake maintenance during normal working hours of 08.00 to 16.30 Monday to Friday other than Bank Holidays and Public Holidays. Work requested outside these hours will be charged at our then prevailing rates.

### **Extent of the Maintenance Agreement**

4.2 You shall be responsible for:

4.2.1 The cost of any maintenance or servicing of the Equipment, or repair or replacement of parts necessary due to your failure to comply fully with your obligations and your duties under this Agreement and as defined in clause 4.3, vandalism or theft, modifications or alterations to the Equipment which have not been approved or operation of the Equipment outside the terms of this Agreement.

- 4.2.2 Ensuring that any defects resulting from such failure to comply are corrected at your expense.  
4.2.3 At our discretion the cost of wear and or damage to tyres and forks during the period of the hire.

#### **Your Duties**

- 4.3 You shall irrevocably agree to:-  
4.3.1 Let us enter your premises to inspect, maintain and repair the Equipment in a suitable working environment;  
4.3.2 Carry out at your own expense routine daily maintenance of the Equipment in accordance with the manufacturer's recommendations and ensure that the Equipment is in complete repair and working condition;  
4.3.3 Keep the Equipment in a clean condition and free from debris or other material likely to affect normal operation;  
4.3.4 Notify us immediately of any failure or reduction in the performance of the Equipment or any damage to it and stop using the Equipment if further damage is likely to occur;  
4.3.5 Instruct us, unless otherwise agreed in writing, to repair all punctures and replace damaged or worn tyres, all at your expense, including those that in our opinion need replacement.  
4.3.6 Where traction batteries are supplied, maintain the batteries and their chargers (at your own expense) in accordance with the manufacturer's recommendations, including installation, connection, charging, discharging and topping up; and  
4.3.7 Carry out any other routine and periodical checks as specified by the manufacturer.  
4.3.8 If in the event that this Agreement shall come to an end for any reason then you will let us enter the premises to recover our vehicle at a time between 8am and 4.30pm on a date notified to you and this Agreement shall be taken as granting to ourselves an irrevocable licence to enter your premises for this purpose.

#### **Increase in Cost of Maintenance**

- 4.4  
4.4.1 We reserve the right to increase the rentals payable under this Agreement by an equal amount to the equivalent increase in the Index of Retail Prices (all items) or 2.5%, whichever is the higher, since the date of this Agreement (or the date of the last increase under this clause if later) if the cost of performing our obligations has increased.  
4.4.2 If we do so we will inform you in writing of the amount of the increase.  
4.4.3 This right will not be exercised more than once in each 3 month period.

#### **5.0 CONFIDENTIALITY**

Subject to sub-clause 8.2 below, each party shall treat as it does its own trade secret information, all information obtained from the other pursuant to the Agreement which is marked confidential or the equivalent or has the necessary quality of confidence about it.

#### **6.0 DEFAULT AND TERMINATION**

Upon any termination under this clause you shall pay to us immediately all amounts due under clause 7.

- 6.1 The occurrence of any of the following events shall be and shall be deemed to be a repudiatory breach of this Agreement by you:  
6.1.1 If you are an individual and you die or have a petition for a bankruptcy order made or presented against you or you enter into a voluntary Arrangement;  
6.1.2 If you are a company and you have a winding up petition made or presented against you or you are placed in liquidation or if a receiver, receiver and manager, administrator or administrative receiver is appointed over all or any part of your undertaking or assets;  
6.1.3 If you cease or threaten to cease to carry on your business or dispose of a substantial part thereof or of your assets (other than in the normal course of your trade) or you are unable to pay your debts as they fall due, all within the meaning of section 123 of the Insolvency Act 1986;  
6.1.4 If you suffer any execution or distress against any of the Equipment;  
6.1.5 If you fail to pay any rental(s) or instalment due under this Agreement within 14 days of the due date(s) for payment or you commit any breach of any other term or condition of this Agreement (and fail to remedy the same, if capable of remedy, within 7 days of notice from us to do so);  
6.1.6 If you are a company and in the event that your Ultimate Parent Company (the definition of ultimate parent company being the same as defined in the disclosure requirements of the Companies Act 1989, Section 6(2), Schedule 5 Part 1, subsection 12) changes from the Ultimate Parent Company disclosed in your latest audited accounts filed at Companies House prior to the date of this Agreement;  
6.1.7 In our opinion, a material adverse change occurs in relation to your business; or  
6.1.8 In our opinion, our right to title to the Equipment is at risk.  
6.1.9 You agree the Agreement and the right to possession of the Equipment will terminate automatically upon the termination of any head lease agreement entered into between us as the owner and any Equipment lessor by reason of our Insolvency or default in the terms of such head lease.  
6.2 If you are treated as having repudiated this Agreement by the occurrence of any of the events referred to in clauses 6.1.2 and/or 6.1.3, this Agreement and the hiring of the Equipment thereunder shall terminate immediately and without notice to you. If you are treated as having repudiated this Agreement by the occurrence of any of the events referred to in clauses 6.1.4, 6.1.5, 6.1.6, 6.1.7, 6.1.8 and/or 6.1.9 we shall be permitted to terminate this Agreement forthwith upon notice to you.  
6.3 Any termination of this Agreement and/or the hiring of the Equipment thereunder shall not be effected by any subsequent acceptance of any instalment of rentals, and upon any such termination your rights to the possession of the Equipment shall cease and we and/or our agents may without notice repossess the Equipment and for that purpose you irrevocably agree that we shall be entitled to enter any site or premises where the Equipment may be located.  
6.4 If the Agreement is terminated in accordance with the Agreement or for any other reason, you will make the equipment available for collection at a date and time convenient to us which shall be no later than 5 working days from the date that you are notified of the termination of the Agreement.

#### **7.0 PAYMENTS ON TERMINATION**

On any termination of this Agreement you will immediately pay to us the aggregate of the Termination Sums referred to below:

- 7.1 All arrears of rentals and other sums;  
7.2 If termination takes place during the MPH, by way of liquidated damages, all rentals which would but for termination have become due and payable from the date of termination up to the end of the MPH less a discount on each rental for accelerated payment at the rate of 3% per annum;  
7.3 If the Equipment is not for any reason, returned or recovered by us in good condition and/or repair, a sum equal to any residual value investment that we have assumed in the Equipment as at the expiry of the MPH (such sum to be certified by us and to be binding in the absence of manifest error (the Residual Value ));  
7.4 If demanded, any costs incurred by us in repossessing, repairing, storing, Insuring or selling the Equipment.  
Your obligations under this clause will be treated as if they had arisen immediately before termination.

#### **8.0 GENERAL**

- 8.1 We will charge you for any losses we have to pay if you break the Agreement.  
8.2 You agree that we may disclose details of this transaction with your consent and that we may refuse to enter into this Agreement without stating a reason. All personal information about you will be treated as private and confidential and we will only use and disclose information held about you (which may include information which is deemed sensitive under the Data Protection Act) and will not disclose any information to any other parties without your consent except in circumstances notified to you. You have a right to see personal information which is held by us. There is a charge if you want to do this. For more details write to us for the attention of The Data Protection Co-ordinator.  
8.3 Any notices served hereunder shall be sufficiently served if sent by pre-paid letter post, or telex, or fax, or email to the usual or last known place of business of the address, and proof of dispatch shall be conclusive evidence of receipt by the addressee in the course of transmission.  
8.4 If there are two or more of you, each of you is separately liable under this Agreement.  
8.5 Although you may not assign this Agreement we may assign it and references to us shall include any such assignee.  
8.6 Clause headings appear for ease of reference only and do not affect the construction of this Agreement.  
8.7 This Agreement supersedes all prior agreements, arrangements and understandings between you and us and contains all of the terms of the hiring agreed between you the customer and us. No variation, waiver or addition to the Agreement shall be effective unless recorded in writing and signed by or on behalf of both parties.  
8.8 No agreement for hire and supply of services shall exist unless and until we accept a written acknowledgement of hire and confirmation in writing accepting our quotation,  
8.9 In the event of our reasonably concluding that there has been a material alteration in the facts specified in any Rental Application Survey Report, or should the use of the Equipment change, we shall be entitled to increase the rentals payable under this Agreement in accordance with clause 4.4 herein.  
8.10 You shall not in any circumstances or for any reason be entitled to make any deduction or withhold any sum from the rental by way of set-off or cross-claim or otherwise,  
8.11 If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Agreement, and the remainder of the provisions in question, shall not be affected, and shall remain in full force and effect.  
8.12 We may change the terms of the Agreement at any time by telling you about the change by written notice, giving 30 days prior to any change taking effect.

#### **9.0 LAW AND JURISDICTION**

- 9.1 The Agreement shall be governed by and construed in accordance with the laws of England and Wales.