

01/04/2015

1. Definitions

1.1 In this Agreement, the following terms shall have the meanings set opposite, unless the context otherwise requires:

"Company"	means Atlas Copco Ltd T/A Atlas Copco Rental, a company incorporated in England under the Companies Acts (Company Number 159809) and having its Registered Office at Swallowdale Lane, Hemel Hempstead, Herts HP2 7HA;
"Company's Depot"	means the depot located at 2 Waldrige Way, Simonside East Industrial Estate, South Shields, Tyne & Wear, NE34 9PZ
"Date of Collection"	means the time at which loading of the Equipment is made available and or is uplifted from Company's Depot or any other depot at which the Equipment is held;
"Date of Commencement"	means either (i) written acceptance or a Hire order by the Hirer of the Quotation issued by the Company, or (ii) provision of the Equipment by the Company to the Hirer, or (iii) the time the Equipment is made available for collection on the agreed delivery date specified in the Hire Order, whichever is the earlier;
"Date of Termination"	means the time at which the Equipment is available for collection by the company or when the customer returns it to the depot or other site previously agreed between the Company and the Hirer. All off hire notifications must be made in writing by the Hirer; where notifications are received after 10am then a full days rental charge will be incurred for that day;
"Equipment"	means any type of machinery or equipment whatsoever provided by the Company to the Hirer on a rental basis and any part or parts thereof and includes spare parts, fuel and tools issued and all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;
"Hirer"	means the person, firm, company or other legal entity taking the Equipment on hire, including the ultimate client of the hirer;
"Hire Charge"	means the charge payable by the Hirer in respect of the hire of Equipment and or personnel as set out in the Quotation;

“Hire Period”	means the period of hire from the Date of Collection to the Date of Termination. A minimum hire period of seven days applies to all orders received;
“Hire Order”	means the order from the Hirer to the Company confirming that the Hirer will proceed with the hire of the Equipment on the terms set out in the Quotation and this Agreement;
“Intellectual Property Rights”	means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names, domain names, rights to goodwill, rights in designs, rights in computer software (including source code and object code), database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world;
“Invoice”	means an invoice issued by the Company to the Hirer in respect of the Hire Charge(s) in accordance with Condition 16;
“Normal Business Hours”	means Monday to Friday 8am to 5pm, excluding local and public holidays.
“Off-Hire Line”	means the statement which is issued by the Company to the Hirer acknowledging the return of the Equipment to the Company’s Depot or other receiving facility or depot as agreed between the Company and the Hirer;
“Postponement Period”	means a period of 10 days starting on the Date of Commencement;
“Quotation”	means the quotation submitted by the Company to the Hirer for the hire of the Equipment and any subsequent written amendment thereto;
“Site”	means the site at which the Equipment will be located and utilised as intimated to the Company by the Hirer.

1.2 The singular number includes the plural and *vice versa*. The masculine gender includes the feminine gender. Reference to persons includes companies and other forms of legal entity. Headings are for reference only.



- 1.3 This Agreement, together with the Quotation and any other documents referred to herein, constitutes the entire agreement between the Company and the Hirer with respect to the hire of Equipment, superseding all proposals, negotiations and counter-proposals. The Company and the Hirer acknowledge and agree that in entering into this Agreement, and any documents referred to herein, they do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to the Company or the Hirer for breach of any of the warranties contained in this Agreement shall be for breach of contract under the terms of this Agreement. Nothing in this Condition 1.3 shall operate to limit or exclude any liability for fraud or fraudulent misrepresentation.
- 1.4 The terms and conditions of this Agreement shall override any terms and conditions of hire or rental of the Hirer including, but not limited to, those included by the Hirer in its acceptance of this Agreement or posted by the Hirer on its internet site. Any special conditions stated on the front of this Agreement or any Quotation shall apply equally with the terms of this Agreement except that, in the event of any conflict, the special conditions shall prevail.
- 1.5 The terms and conditions of this Agreement shall become effective when either a) the Hirer confirms acceptance of the Quotation or b) the Hirer issues a Hire Order to the Company for services offered in the Quotation.

2. Commencement and Termination of Hire

- 2.1 This Agreement shall commence on the Date of Commencement, and shall continue until the Date of Termination.
- 2.2 Where the Company is unable to provide the Equipment in accordance with a Hire Order or written instructions for the Hirer in a timely manner, the Company shall give advance notification to the Hirer of its inability to provide the Equipment. The Hirer will not be afforded any commercial compensation for the Company's inability to provide the Equipment in accordance with this Condition.
- 2.3 Upon return of the Equipment to the Company's Depot, or other prior agreed location, an Off-Hire Line shall be issued to the Hirer by the Company acknowledging the return of the Equipment. The Off-Hire Line shall only be issued once the Equipment has been safely unloaded. Equipment on hire must be returned to the Company's Depot during Normal Business Hours.
- 2.4 The Hirer shall be solely responsible for the safe unloading and loading of the Equipment at the Site. Any personnel / employees supplied by the Company or any third party assisting the Hirer shall be deemed to be under the Hirer's control and shall comply with the directions of the Hirer.



- 2.5 Subject to the terms of this Agreement, the risk of loss, theft, damage or destruction for the Equipment supplied by the Company to the Hirer shall pass from the Company to the Hirer on the Date of Collection. The Equipment shall remain at the sole risk of the Hirer during the Hire Period. For the avoidance of doubt, once risk in the Equipment has passed to the Hirer, in the event of loss of or damage to the Equipment which prevents the operation of the Equipment, the Hire Charge will continue to apply until the Date of Termination.

3. Variations

- 3.1 The Hirer may issue written requests to the Company to make a variation to the Quotation or Hire Order which is within the capability and resources of the Company. The Company shall be entitled to a reasonable amount of time to review and or reject a proposed variation. If in the negotiation of a variation, the Company incurs cost and expenses, the Hirer shall be responsible for such costs and / or expenses.
- 3.2 Any commercial adjustment to the Hire Charge and / or pricing schedule resulting from any proposed variation shall be valued at the appropriate Hire Charge set out in the Quotation or Hire Order. Where such charges are absent then the Company shall submit an applicable Hire Charge to the Hirer. Any commercial adjustment to the Hire Charge and/or pricing schedule shall be detailed in the variation communications.
- 3.3 A variation shall not be binding on the Company until such time as it is agreed and signed by an authorised representative of the Company.

4 Personnel

- 4.1 Where personnel are supplied by the Company as part of any work under the Quotation or Hire Order. The Company shall supply personnel whom they reasonably believe to be competent in the operation of the Equipment. Such personnel shall perform their duties with reasonable care and skill. The Hirer shall not permit any other personnel to operate the Equipment without the Company's prior written consent.
- 4.2 Cost, charges and expenses applicable to the provision by the Company of personnel shall be specified on the Quotation and the Hire Order.

5 Non Solicitation

The Hirer and / or its clients or associates shall not solicit or entice away or endeavour to solicit or entice away any individual person(s) who is employed or engaged by the Company as an employee, consultant or other role and with whom the Hirer has had any dealings with whatsoever during the course of performance of any Hire Order. Upon completion of a Hire Order this provision shall remain in force and shall cease to be effective after a period of six months from a further Hire Order being placed with the Company.



6 Order postponement / cancellation and or early termination

6.1 Order Postponement

Where the Hirer has supplied the Company with a Hire Order and a Date of Commencement is established, if the Hirer subsequently informs the Company of a delay or postponement to the Date of Commencement then the Company shall notify the Hirer of the appropriate standby / holding charges / rates for the Equipment detailed in the Hire Order. Such charges shall be a minimum 20% reduction on the Hire Charge stated in the Quotation and shall be payable by the Hirer from the Date of Commencement until such Equipment is collected or mobilised to Site or, if earlier, the expiry of the Postponement Period. In the event that the Postponement Period expires prior to the Equipment being collected or mobilised to Site, the hire will be deemed to be terminated and the Hirer will be liable for the full Hire Charge except to the extent that the Company is in a position to arrange to re-hire the Equipment during the scheduled Hire Period.

6.2 Cancellation

Where the Hirer has issued the Company with a Hire Order to make ready Equipment and or personnel for that Hire Order and the Hirer, before mobilisation of the Equipment cancels that Hire Order, the Hirer will be liable for the full Hire Charge except to the extent that the Company is in a position to arrange to re-hire the Equipment during the scheduled Hire Period.

7. Care and Maintenance

- 7.1 Unless the Company receives notification to the contrary within twenty-four (24) hours from the Date of Collection, all Equipment will be deemed to have been delivered to the Hirer at the Date of Collection in good order and to the Hirer's satisfaction.
- 7.2 The Company accepts no responsibility for loss or damage to the Equipment or any part of the Equipment on hire from the Date of Collection until the Date of Termination when an Off-Hire Line is issued.
- 7.4 In the event of the Equipment or any part thereof being lost or damaged during the Hire Period (fair wear and tear excepted), the Hirer will be invoiced for (1) the full reinstatement value as new of the Equipment (or part thereof) or the cost of repairs to the Equipment (whichever being applicable), and (2) the full Hire Charge for the later of (i) the period up to the Date of Termination, or (ii) the period up to the date at which the full replacement value of the Equipment (or part thereof) or the cost of repairs to the Equipment is paid to the Company, and (3) all associated costs of the Company (including legal fees).
- 7.5 The Hirer will not allow the Equipment or any part of the Equipment to be used for any purpose beyond its capacity or agreed operational running period or in a manner likely to result in undue deterioration. It shall be the responsibility of the Hirer to ensure that all Equipment is fully suitable for the purpose for which it is required and that it remains so during the Hire Period.

- 7.6 The Hirer agrees that it will not:
- (a) without the prior consent of the Company, effect any mechanical or other modifications to the Equipment or any part of the Equipment or make any alterations or additions (for the avoidance of doubt, any such additions, alterations or modified parts (whether with or without consent) shall become part of the Equipment and shall belong to the Company);
 - (b) remove or interfere with any identification marks or plates affixed to the Equipment nor attempt or purport to do so nor permit the same;
 - (c) deface the paintwork or bodywork of the Equipment nor add or erect any painting, signwriting, lettering, or advertising to or on the Equipment;
 - (d) suffer or permit the Equipment or any part of the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment or any part of the Equipment is so confiscated, seized or taken, the Hirer shall notify the Company and the Hirer shall at its sole expense use its best endeavours to secure an immediate release of the Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - (e) use the Equipment or any part of the Equipment for any unlawful purpose;
 - (f) do or permit to be done anything which could invalidate the insurances referred to in condition 19.
- 7.7 The Hirer shall ensure that at all times the Equipment remains identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment.
- 7.8 The Hirer is responsible for ensuring that the Equipment is used in accordance with the manuals issued by the Company and installed in accordance with any statutory regulations, codes of practice, guidelines or recommendations about working loads relating to the Equipment and shall indemnify the Company, its agents, employees and contractors against all fines, penalties, and liabilities imposed on the Company its agents, employees and contractors or arising in respect of any noncompliance or contravention of any such statutory regulations, codes of practice, guidelines or recommendations, together with any proper and reasonable costs and/or expenses relating thereto and incurred by the Company.
- 7.9 For the avoidance of doubt, the Hirer will be liable to the Company for destruction of or damage to the Equipment or any part of the Equipment caused by negligence, misuse or mishandling or damage to the Equipment caused maliciously or mischievously by any party during the Hire Period and the terms of Condition 7.4 shall apply in such circumstances.

8. Sub-Letting

The Hirer shall not sub-let the Equipment or any part of it without the prior written consent of the Company. The Hirer shall not sell, assign, mortgage, or otherwise dispose of or part with possession of the Equipment or part thereof or charge the benefit of this Agreement nor attempt or purport to do so.

9. Change of Site

The Hirer shall not move the Equipment from the Site without the Company's prior written consent.

10. Inspection and Servicing

10.1 The Hirer shall afford the Company and/or its insurer's access to the Equipment at all reasonable times for the purpose of inspection, testing, adjusting, repairing or replacing the Equipment. In the event of a breakdown of the Equipment or any part of the Equipment, not readily repairable, the Company shall be entitled, but not bound, to supply substitute equipment of a similar type and condition. If the Company is not in a position to do so, the hire in respect of that item of Equipment or part thereof (but not, for the avoidance of doubt, in respect of any other Equipment made available to the Hirer by the Company) shall terminate from the date of the breakdown of that item of Equipment (notwithstanding the Date of Termination). The Hirer shall have no claims against the Company for loss or damage occasioned to the Hirer as a result of that item of Equipment no longer being available to the Hirer.

10.4 Routine maintenance (i.e. oil level, water level including antifreeze protection, battery charging, greasing, along with any other specific instructions intimated to the Hirer) is the responsibility of the Hirer. All costs incurred as a result of damage caused by failure to carry out routine maintenance will be charged to the Hirer. Records of service activities undertaken by the Hirer at Site must be maintained and supplied to the Company on demand.

11. Breakdown

11.1 Any breakdown at the Site or unsatisfactory working performance of any part of the Equipment must immediately be reported to the Company. Oral communication shall be accepted to facilitate timely action, however full details of any breakdown must be confirmed in writing. Any claim for breakdown allowance or rebate will only be considered when supported by a fully documented history of events from the time of breakdown to reinstatement.

11.2 Where equipment breakdown / failure is attributed to Hirers misuse or abuse then Hirer shall pay all rental and transport costs to the Company for return to the Company works.



11.3 The Company shall not be liable to the Hirer for any direct, indirect or consequential loss incurred due to any breakdown of the Equipment at the Site howsoever arising.

12. Allowances

Subject to Condition 11, no charge will be made to the Hirer for any period during which an item of Equipment is not in full working order as a result of an inherent fault or fair wear and tear or anything regarded by the Company as a normal working repair. Save in respect of the Company's liability as provided for under this Agreement, the Company shall not be liable for stoppages resulting from causes outwith the Company's control as set out in condition 29 of this Agreement.

13. Periods of Hire, Overtime, Idle Time and Travelling Time

13.1 Hire equipment will be charged at the regime stated in the Quotation document. The hire charge shall be paid based upon a minimum seven (7) day week, thereafter on a daily basis, unless otherwise stated in writing by the Company. Where the time for which the Equipment is in use exceeds the regime quoted by the Company in the Quotation, then the Company will charge for additional hours run as set out in the Quotation.

13.2 Travelling time and fares for drivers, operators and any person supplied by the Company where required, will be charged for on a cost plus percentage basis, such percentage to be stipulated in the Quotation.

13.3 Any time spent by the Company's personnel in assembling, rigging and dismantling the Equipment to the specific requirements of the Hirer shall be charged as stipulated in the Quotation.

14. Repairs and Adjustments

The Hirer shall not repair or attempt to repair the Equipment unless prior authorisation has been issued by the Company in writing.

15. Completion of Hire

15.1 Where the hire is for a fixed period, it shall terminate on the Date of Termination. Where the hire is not for a fixed period, or where it is continued after the expiry of the fixed period without any new period or extension order being determined, the charges as set out in the Quotation shall continue.

15.2 If the Hirer shall fail to pay any sum as and when it may become due, the Company shall be entitled and without prejudice to any other remedies in its safe opinion to retake immediate possession of the Equipment for which purpose it shall be lawful for the Company to enter into or upon any premises or Site where the Equipment may be.



16. Hire Charge

The Company shall send an Invoice to the Hirer for the Hire Charge(s) every 28 days or per calendar month in arrears (to be determined at the sole discretion of the Company) and the Hirer shall pay all sums due under the Invoice within thirty (30) days of the date of the Invoice. The Hire Charge shall be paid to the Company by Bank Automated Clearing System ("BACS") or as otherwise agreed between the Company and the Hirer and stated on the Invoice. Any payment sent by post shall be sent at the risk of the Hirer. In addition, the Hirer will pay Value Added Tax at the standard rate for the time being in force, wherever applicable. Time shall be of the essence in respect of the payment of all sums due hereunder. All sums due hereunder shall be paid in pounds Sterling. All payments to be made by either party under this Agreement shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.

17. Non-payment of Hire Charge

In the event of the Hirer failing to pay the Hire Charge on the due date in terms of Condition 16 above then, without limiting the Company's rights under condition 25, interest will be charged on the outstanding Hire Charge at the rate of four per cent (4%) above the base rate from time to time fixed by The Royal Bank of Scotland plc from the due date for payment until receipt of cleared funds. In the event of the Company being required to recover the Hire Charge by due process of law, the Hirer shall be responsible for all legal fees and expenses incurred by the Company in recovery of all sums outstanding.

18. Limitation of Liability

- 18.1 The Company's liability under this Agreement shall be limited (to the fullest extent that such liability may be limited by law) to (1) the death or injury of any person; and (2) damage to property belonging to the Hirer or any third party, arising in both cases as a result of (a) any negligent act or omission on the part of the Company, its employees, agents or those for whom the Company is responsible in law; or (b) the negligent operation or use of any property belonging to the Company, with the exception of (i) the Equipment, its operation or use (unless caused by a defect in the Equipment) and/or (ii) any property of the Company (including the Equipment) which has been used in a manner contrary to the Company's instructions or guidelines or outwith the Company's reasonable supervision or control.
- 18.2 The Company accepts no responsibility for any other loss, injury or damage, arising out of (1) the operation or use of the Equipment; (2) any property of the Company which has been used in a manner contrary to the Company's instructions or guidelines or outwith the Company's reasonable supervision or control; (3) the activities or negligence of any party with the exception of the Company, its employees, agents or those for whom it is responsible in law; and (4) the property of the Hirer or any third party.



- 18.3 The Hirer shall be solely responsible for and keep the Company fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by the Company as the result of (1) any accident involving the Equipment, its operation or use (other than death or personal injury resulting from the negligence of the Company or its employees or agents); or (2) any negligent act or omission on the part of the Hirer, its employees, agents or those for whom the Hirer is responsible in law; or (3) any accident involving property belonging to the Company where such property has been operated or used in a manner contrary to the Company's instructions or guidelines or outwith the Company's reasonable supervision or control; and (4) the operation or use of any property belonging to the Hirer or any third party.
- 18.4 The hire of the Equipment by the Company is not subject to any condition or warranty express, implied or statutory in connection with the fitness of the Equipment for any purpose, and any conditions and warranties are hereby expressly excluded insofar as permitted by statute.
- 18.5 Unless otherwise stated in this Agreement, neither party shall be liable to the other for any indirect or consequential loss or damage, including, without limitation, loss of profit, loss of goodwill, loss of revenue or turnover, loss of opportunity, loss of management time and labour costs arising out of the implementation, performance or observance of any of the terms of this Agreement or the Equipment, its operation or use.
- 18.6 Subject to Condition 18.8, any liability of the Company to indemnify the Hirer or any third party assumed in terms of this Agreement shall be limited as follows:-
- (a) The aggregate maximum liability of the Company in respect of all and any claims under this Agreement or otherwise (including under the laws of negligence) shall in no event exceed **Five Million Pounds Sterling (£5,000,000)**.
 - (b) The maximum liability of the Company in respect of each occurrence of a claim under this Agreement or otherwise (including under the laws of negligence) shall in no event exceed Five Million Pounds Sterling (£5,000,000).
 - (c) The Company shall not be liable in respect of any claim under this Agreement where the amount of such claim does not exceed **Ten Thousand Pounds Sterling (£10,000)**
 - (d) The Company shall not be liable in respect of all and any claims made under this Agreement or otherwise (including under the laws of negligence) unless and until their aggregate cumulative liability in respect of all and any such claims (ignoring for these purposes all and any claims in respect of which the Company does not have any liability pursuant to the preceding paragraphs) exceeds **Five Thousand Pounds Sterling (£5,000)** in which event the Company shall be liable for the full amount of the claim and not just the excess of such liability.

- 18.7 The Company shall not be liable in respect of any claims, losses, damages, costs, expenses and liabilities suffered, sustained or incurred by the Hirer resulting from (1) any infringement or alleged infringement by the Company or those for whom they are responsible in law of any Intellectual Property Rights of any third party or the Hirer or (2) pollution emanating from the Equipment or other property (a) of the Company whether owned, leased or hired or (b) of a third party, whether owned, leased or hired, where such property is made available to the Hirer pursuant to this Agreement, and associated clean up costs, arising out of or in connection with the performance of this Agreement and whether or not contributed to or caused by the negligence or breach of duty (whether statutory or otherwise) of the Company.
- 18.8 For the avoidance of doubt, neither party hereby excludes or limits its liability for death or personal injury caused through its negligence.

19. Insurance

- 19.1 The Hirer will, during the Hire Period, insure the Equipment with an insurance company of good repute for its full reinstatement value against loss or damage from all commercial risks (including third party or public liability risks) and against such other or further risks relating to the Equipment as may be required by law and shall procure that such insurance company shall waive all rights of subrogation against the Company and shall furnish to the Company documentary evidence verifying the same.
- 19.2 The Hirer shall notify its insurers that the Equipment is on hire from the Company and request the insurers to endorse a note of such interest on the policy of insurance naming the Company as loss payee, shall on demand show to the Company the policy of insurance, the premium receipts and insurance certificate and shall not use or allow the Equipment to be used for any purpose not permitted by the terms and conditions of the policy of insurance or do or allow to be done any act or thing whereby the insurance may be invalidated. If the Hirer shall default in the payment of any premium in respect of the insurance the Company may pay such premium and recover the same as a debt due from the Hirer in which event the Hirer shall repay the amount thereof to the Company on demand. The Hirer shall indemnify the Company against all loss or damage to the Equipment not recoverable under the policy of insurance.
- 19.3 Where any event or accident shall occur which is a risk covered by the Hirer's insurance hereunder, the Hirer shall immediately notify the Company thereof, shall not compromise any claim without the consent of the Company, shall allow the Company to take over the conduct of negotiations (except in relation to claims of the Hirer for personal injuries, loss of use of the Equipment, or loss or damage to the property of the Hirer unconnected with the Equipment) and shall at the expense of the Hirer take such proceedings (in the sole name of the Hirer or jointly with the Company) as the Company shall direct, holding all sums recovered, together with any monies received by the Hirer under its policy of insurance, on trust for the Company and paying or applying the same as the Company directs and as herein provided. If any Equipment is declared a total loss, the hire thereof

shall terminate. In such event the Company shall apply any proceeds of insurance received by it at its option:

- (a) towards a replacement of equivalent value which replacement shall be deemed to be included in this Agreement for all purposes and the Hirer shall continue to be liable to pay the Hire Charge as if such loss had not taken place; or
- (b) in or towards payment to the Company of the sum necessary to compensate the Company for the loss of profit suffered as a result of the loss of that Equipment.

19.4 The Company shall have the right to repair or have repaired any Equipment which has been damaged in any way. If the Company does not choose to do so, the Hirer shall be liable to reinstate or repair at its own expense (but subject to any insurance proceeds) Equipment which has not become a total loss and shall continue to pay the Hire Charge in respect of such Equipment during such reinstatement or repair.

19.5 The Hirer will be liable to pay to the Company any amount deducted by the insurers by way of excess or in respect of damage caused to the Equipment prior to the date of total loss, and (subject to the application of insurance proceeds under Condition 19.3) shall indemnify the Company against all and any loss suffered by it in consequence of the loss or destruction of the relevant Equipment.

20. Notice of Accident

If the Equipment and or personnel employed by the Company are involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Company by telephone and confirmed in writing to the Company's Depot and in respect of any claim not within the Hirer's agreement for indemnity, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Company's consent in writing - (which consent must be signed by an authorised signatory of the Company).

21. Ownership

During the Hire Period (unless the Hirer intimates to the Company at the time the Quotation is issued that the Hirer wishes to purchase all or part of the Equipment), the Equipment shall at all times remain the property of the Company or of any third party from which the Company may have hired any of the Equipment, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement) and shall not do or permit or cause to be done any matter or thing whereby the rights of the Company in respect of the Equipment are or may be prejudicially affected.

22. Ownership of Plans

Any plans, documents, drawings, specifications, diagrams, formulae, calculations, costings or other information tools or materials ("Plans") supplied by the Company to the Hirer shall belong to the Company and must be returned to the Company on demand. No alterations of any kind may be made to the Plans without the Company's prior written

approval and the Company accepts no liability for the consequences of any unauthorised alteration. Any and all Intellectual Property Rights in the Plans shall remain the exclusive property of the Company (or of any third party from which the Company may have obtained the Plans) at all times and no unauthorised copying or use of the Plans may be made.

23. Licences, Approvals, etc.

The Hirer is solely responsible for obtaining and complying with all licences, approvals, permits and authorisations, of whatever nature, which are necessary to enable the Equipment to be used for the purpose for which it is hired and will indemnify the Company against any failure to do so.

24. Indemnity

The Hirer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature made by third parties (including employees of the Hirer) and caused in whole or in part or arising out of any act or omission of the Hirer in connection with the use of the Equipment or breach of this Agreement by the Hirer.

25. Termination

25.1 In the event of this Agreement coming to an end for any reason whatsoever, then the Company is hereby irrevocably authorised to enter onto the premises of the Hirer and repossess the Equipment, and any other equipment of the Company in the Hirer's possession or under its control.

25.2 The Company may, without prejudice to any other right or remedy which may be available to it, terminate this Agreement immediately by written notice to the Hirer if:

- (a) any diligence, distress, execution, or other legal process shall be levied on or against the Equipment or any part thereof or against any premises where the Equipment is located or against any of the Hirer's goods or other property or the Hirer shall permit any judgment against it to remain unsatisfied for seven (7) days; or
- (b) the Hirer, being a body corporate, shall enter into any liquidation, shall call any meeting of its creditors or shall have a receiver or receiver manager of all or any of its undertaking or assets appointed, or shall suffer the appointment or the presentation of a petition for the appointment of an administrator under the provisions of Part II of the Insolvency Act 1986, or shall be deemed by virtue of Section 123 of the Insolvency Act 1986 to be unable to pay its debts, then in each and every such case the hire constituted by this Agreement shall *ipso facto* and without notice terminate and no payment subsequently accepted by the Company without knowledge of such termination shall in any way prejudice or affect the operation of this Condition 25.2; or

- (c) the Hirer defaults on any of its payment obligations; or
- (d) the Hirer commits a material breach of this Agreement which breach is irremediable, or which breach (if remediable) is not remedied within 30 business days after the service of written notice from the Company requiring it to do so; or
- (e) the Hirer suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (f) the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made for or in connection with the winding up of the Hirer; or
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Hirer; or
- (i) the holder of a qualifying floating charge over the assets of the Hirer has become entitled to appoint or has appointed an administrative receiver; or
- (j) a person becomes entitled to appoint a receiver over the assets of the Hirer or a receiver is appointed over the assets of the Hirer; or
- (k) a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against the whole or any part of the Hirer's assets and such attachment or process is not discharged within fourteen days; or
- (l) any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in the conditions above; or
- (m) the Hirer suspends or ceases or threatens to suspend or cease carrying on all or a substantial part of its business.

26. Deposit

A deposit shall be paid at such amount as specified in the Quotation in advance of the Date of Collection by the Hirer in all cases where there is no authorised ledger account. Such deposit will be held as security against the return of the Equipment on the Date of Termination and, unless the Company agrees otherwise, no part of the deposit will be available to be set off against the Hire Charge which must be paid in terms of Condition 16 above or at such other intervals as may be required by the Company. On the Date of Termination, the deposit shall be refunded provided that the Company reserves the right



to apply the deposit towards a repayment of any balance of the Hire Charge that may be due to the Company or any other sum that may be due by the Hirer to the Company on any account whatsoever.

27. Offset of Hire Charge

The Hire Charge cannot be offset against the cost of purchasing the Equipment on hire, or the cost of a new piece of Equipment. The Hirer hereby waives all and any future claims and rights of set off against any instalment of Hire Charge or any payment due hereunder and agrees to pay the Hire Charge and other amounts hereunder regardless of any set off or cross-claim on the part of the Hirer against the Company.

28. Confidential Information

Neither party shall, during and after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature. Each party shall on demand and on termination of this Agreement surrender to the other party all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.

29. Force Majeure

Although the Company will use all reasonable endeavours to discharge its obligations under this Agreement in a prompt and efficient manner, the Company shall not 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 results from events, circumstances or causes beyond its control, including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service.

30. Exclusion of Warranties

All common law or statutory warranties with regard to the Equipment (except those expressly stated hereunder) are expressly excluded to the fullest extent permitted by law.

31. Assignment and sub-contracting

- 31.1 The Hirer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge or deal in any other manner with this Agreement or any of its rights and obligations under or arising out of this Agreement, or any document referred to in it, or purport to do any of the same.
- 31.2 The Hirer shall not subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent without the prior written consent of the Company. The Hirer shall in all cases retain sole responsibility for its performance of the task assigned to it under this Agreement, regardless of the use of authorised sub-contractors. The Hirer is acting on its own behalf and not for the benefit of another person.

32. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

33. No 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

34. Severance

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

35. Notices

- 35.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid post or recorded delivery or by commercial courier, to each party required to receive the notice or communication to the address specified by the relevant party by notice in writing to each other party.
- 35.2 Any notice or other communication shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this condition;
 - (b) if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt; or
 - (c) if sent by pre-paid post or recorded delivery, 9.00 am on the second Business Day after posting.
- 35.3 A notice or other communication required to be given under this Agreement shall not be validly given if sent by e-mail.
- 35.4 The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.

36. Governing Law

This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

37. Dispute Resolution

In the event of any dispute arising between the parties in connection with this Agreement, the parties will in good faith seek to resolve such dispute through negotiation and or mediation. The mediator shall be agreed upon within twenty-one (21) days of either party requesting mediation, failing which either party may apply to the President of the Law Society of England to appoint a mediator. Unless otherwise agreed, each party shall share equally the costs of the mediation. If the dispute is not resolved within twenty-eight (28) days of the mediator's appointment, then either party may commence court proceedings, but provided that nothing in this Condition 37 shall prevent either party seeking interim interdict at any time if it reasonably believes such action is necessary to prevent irreparable damage.