

## TERMS & CONDITIONS OF HIRE

WARNING: These Terms and Conditions contain exclusion clauses and limitation on liability

### 1 INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Agreement** means the agreement between the Supplier and the Customer for the hire of the Goods in accordance with these Conditions;

**Agreement Documentation** means any Order, Hire Delivery Note and these Conditions;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Commencement Date** means the date that the Hirer takes Delivery of the Equipment.

**Conditions** means the terms and conditions set out in this document [as amended from time to time in accordance with **clause 15.6**].

**Delivery** means the transfer of physical possession of the Equipment to the Hirer either by delivery to the Site or collection from the Supplier's premises by the Hirer;

**Deposit** means the amount specified by the Supplier and notified to the Hirer which is payable by the Hirer in full, in cleared funds prior to the Commencement Date;

**Equipment** means scaffolding, tubes, fittings, ladders, systems, boards, and fittings (or any part of them) as set out in the Order.

**Force Majeure Event** has the meaning given in **clause 12**;

**Hire Delivery Note** means the document which sets out the Hirer's details, Equipment to be hired, delivery date of the Equipment and location where the Equipment is to be used;

**Hire Period** means the Minimum Hire Period, as may be extended by the agreement of the parties;

**Hirer** means the person or firm who hires the Equipment from the Supplier;

**Minimum Hire Period** means a week (consisting of seven consecutive days commencing on the Delivery Date) which the Hirer hires the Equipment as specified in the Hire Delivery Note;

**Order** means the Hirer's order for the hire of the Equipment, whether written or verbal;

**Hire Charges** means the payments made by or on behalf of the Hirer for the hire of the Equipment, as specified in the Agreement Documentation;

**Supplier** means TRAD Hire and Sales Limited (registered in England and Wales with company number 03491083), whose registered office is at TRAD House, Imperial Street, Bromley by Bow, London, E3 3ED;

**Termination Date** means the date the Equipment is returned to the Supplier;

**Total Loss** means due to the Hirer's default the Equipment is, in the Supplier's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated;

**VAT** means value added tax chargeable under the Value Added Tax Act 1994.

1.2 **Construction.** In these Conditions, the following rules apply:

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

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) 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.

(d) 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.

(e) A reference to writing or written includes faxes and e-mails.

(f) A reference to this Agreement or to any agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement as varied or novated (in each case other than by breach of the provisions of this Agreement) from time to time.

### 2 BASIS OF AGREEMENT

2.1 These Conditions apply to the Agreement to the exclusion of any other terms that the Hirer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Hirer to hire the Equipment in accordance with these Conditions.

2.3 The Order shall only be deemed to be accepted when the Supplier either issues the Hire Delivery Note or commences fulfillment of the Order, at which point the Agreement shall come into existence.

2.4 The Agreement constitutes the entire agreement between the parties. The Hirer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Agreement.

### 3 HIRE PERIOD

3.1 The Supplier shall hire the Equipment to the Hirer on and subject to the terms and conditions of this Agreement.

3.2 The Supplier shall not, other than in the exercise of its rights under this Agreement and applicable law, interfere with the Hirer's quiet possession of the Equipment.

3.3 The date of collection or the delivery of the Equipment will be the Commencement Date for the commencement of the Hire Charges and shall continue for no less than the Minimum Hire Period specified in the Hire Note unless this Agreement is terminated earlier in accordance with its terms.

### 4 DELIVERY AND COLLECTION

4.1 The Supplier shall deliver the Equipment to the Site or such other location as the parties may agree (Delivery Location) or make the Equipment available for collection at its premises by the Hirer (Collection Point) at any time after the Supplier notifies the Hirer that the Equipment is ready. Where the Supplier has agreed to deliver the Equipment to the Delivery Location the Hirer shall be responsible for the Supplier's costs incurred in the delivery to include all carriage costs, insurance and any applicable sales taxes.

4.2 Delivery of the Equipment shall be completed where the Supplier has agreed to deliver the Equipment, on the arrival of the Equipment at the Delivery Location or if the Supplier and the Hirer have agreed that the Hirer shall collect the Equipment from the Collection Point, delivery shall be completed at the point the Hirer commences loading the Equipment onto the Hirer's vehicle.

4.3 The Hirer shall procure that a duly authorised representative of the Hirer shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representatives shall constitute conclusive evidence that the Hirer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save for any latent defects not reasonably apparent on inspection). The Hirer's duly authorised representative shall sign a Hire Delivery Note as conclusive proof of delivery and acceptance of the Equipment unless the Hirer notifies the Supplier in writing within 48 hours of delivery of any discrepancy between the Equipment listed in the Hire Delivery Note and the Equipment actually delivered.

4.4 Where the Hirer has elected to collect the Equipment, the Hirer shall inspect the Equipment once it has loaded, and shall sign the Hire Note as conclusive proof of the receipt of the Equipment set out in the Hire Note.

4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Hirer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.6 If the Supplier fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Hirer in obtaining replacement hire equipment of similar description and quality in the cheapest market available, less the Hire Charges of the Equipment. The Supplier shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event or the Hirer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.7 To facilitate Delivery the Hirer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery to be carried out safely and expeditiously.

### 5 RETURNS

5.1 The Hirer agrees that at the termination of the Hire Period to return the Equipment to the Supplier's premises from which it either collected the Equipment or from which the Supplier delivered the Equipment to the Hirer's site. Following the expiry of the Minimum Hire Period the Hirer must give no less than 48 hours' notice in writing of its intention to terminate the Hire Period, and obtain an off-hire reference from the Supplier confirming the Supplier's acceptance of the termination of the Hire Period and the date by which the Equipment must be returned (the **Return Date**). The Hirer shall remain fully liable for all Hire Payments relating to the Equipment until the Equipment is returned to the Supplier and it is returned by the Return Date. Accounting procedures for off-hire Equipment will take place after the return by the Hirer of the Equipment to the Supplier's premises from which the Equipment was hired. Where the Supplier has agreed in advance with the Hirer to collect the Equipment upon the agreed Termination Date from the Site, as specified by the Hirer, the Hirer shall be liable for all associated carriage charges, including cost of carriage, any insurance, any other duties or applicable tax associated with the collection of the Equipment and the Hirer shall continue to be fully liable for all Hire Charges in respect of the Equipment until the Equipment has been fully recovered by the Supplier. Where the Equipment is not at the original Site, the Hirer shall on the request of the Supplier confirm the location of the Equipment to the Supplier in writing within 1 Business Day of receipt of such request from the Supplier. The Hirer shall permit the Supplier and any person authorised by the Supplier at all times to enter the premises at which the Equipment is located to inspect and examine the Equipment. The Supplier may in its sole discretion include an additional charge for the full replacement value of the Equipment should the Supplier have any reason to consider that the Hirer no longer has the Equipment in its possession.

### 6 HIRE CHARGES AND DEPOSIT

6.1 The Hirer shall pay the Hire Charges to the Supplier in accordance with the terms of this clause and any payment schedule agreed in the Hire Delivery Note. The Hire Charges shall be paid in pounds sterling in cleared funds.

6.2 The Hire Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the matter from time to time prescribed by law.

6.3 All amounts due under this Agreement shall be paid in full without any set-off, counter claim, deduction or withholding (other than by any deduction or withholding of tax as required by law). The Hirer agrees and acknowledges that it shall remain fully liable for all Hire Charges until the Equipment is returned to the Supplier in accordance with the provision of Condition 5 of these Conditions.

6.4 If the Hirer fails to make any payment due to the Supplier under this Agreement by the due date for payment then, without limiting the Supplier's remedies the Hirer shall pay interest on the overdue amount at the rate of (8)% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Hirer shall pay the interest together with the overdue amount.

6.5 The Hirer shall pay the Deposit to the Supplier where the Supplier has notified the Hirer that it requires a Deposit prior to the commencement of the Hire Period. The Deposit is a deposit against any loss of or damage caused to the Equipment. If the Hirer causes any loss or damage to the Equipment (in whole or in part) the Supplier shall be entitled to apply the Deposit against such loss or damage. The Supplier may utilise the Deposit to off-set any Hire Charges which the Hirer has not paid at the Termination Date and shall notify the Hirer of any shortfall in the outstanding Hire Charges after the Deposit has been utilised. In the event that there is any Deposit remaining after the payment of any outstanding Hire Charges, the Supplier shall refund the balance within five (5) Business Days, at the end of the Hire Period. The Hirer shall pay any shortfall in the Hire Charges after the Deposit has been deducted within 5 Business Days of the end of the Hire Period. The Supplier shall be entitled to issue invoices monthly at the end of each month of the Hire Period or on completion of the Hire Period. The Hirer shall be obliged to pay the amounts due under an invoice within 24 hours of receipt where it received the invoice on a Business Day. If the Hirer received the invoice on a non-Business Day it shall pay the invoice on the Business day immediately following the date of receipt.

### 7 TITLE RISK AND INSURANCE

7.1 The Equipment shall at all times remain the property of the Supplier, 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).

7.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery. The Equipment shall remain at the sole risk of the Hirer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Hirer (**Risk Period**) until such time as the Equipment is redelivered to the Supplier. During the Hire Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:

- insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing; and
- insurance of such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment.

7.3 The Hirer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Hirer's possession or use of the Equipment.

7.4 The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

### 8 HIRER'S RESPONSIBILITIES

8.1 The Hirer shall during the term of this Agreement:

- ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Supplier;
- take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment;

(d) keep the Supplier fully informed of all material matters relating to the Equipment;

(e) at all times keep the Equipment in the possession or control of the Hirer;

(f) permit the Supplier its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;

(g) not, without the prior written consent of the Supplier, put with control of (including for the purposes of repair or maintenance), sell or offer for sale or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

(h) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Equipment and shall ensure that any mark or labelling on the Equipment which has been added by the Supplier to identify the Equipment as belonging to the Supplier is not defaced or removed and, where the Equipment has become affixed to any land or building, the Hirer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Equipment 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 Supplier of any rights such person may have or acquire in the Equipment and a right for the Supplier to enter onto such land or building to remove the Equipment;

- not suffer or permit 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 is so confiscated, seized or taken, the Hirer shall notify the Supplier and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- not use the Equipment for any unlawful purpose; and
- not do or permit to be done anything which could invalidate the insurances referred to in Condition 6.2.

8.2 The Hirer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Hirer or its officers, employees, agents and contractors, and the Hirer undertakes to indemnify the Supplier on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of this Agreement, including any third party claims for death or personal injury or property damage.

8.3 All Equipment will be inspected on its return to the Supplier's premises. If following such inspection the Supplier in its reasonable opinion determines that any Equipment is damaged or unusable the Supplier shall be entitled to charge the Hirer the cost of repair or replacement of such Equipment. Prior to implementing the charge the Supplier shall inform the Hirer of its opinion as to the damage of the Equipment and shall give the Hirer 7 days during which it may inspect the Equipment to view the alleged damage. The Hirer shall be entitled to comment on the damage to the Equipment but the Supplier's opinion as to the damage shall be final.

### 9 HIRER'S INSOLVENCY OR INCAPACITY

9.1 If 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) is any partner to whom any of the foregoing apply, or the Supplier reasonably believes that the Hirer is about to become subject to any of the above then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend the Agreement without incurring any liability to the Hirer, and all outstanding sums in respect of Equipment shall become immediately due.

9.2 Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued at as termination. Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

### 10 WARRANTY

10.1 The Supplier warrants that the Equipment shall substantially conform to its specification (as made available by the Supplier), be of satisfactory quality and fit for any purpose held out by the Supplier.

10.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Supplier, the Hirer shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer.

10.3 If the Supplier fails to remedy any material defect in the Equipment in accordance with clause 10.1, the Supplier shall, at the Hirer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Hire Charges payable during the remaining term of the Agreement.

### 11 LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- fraud or fraudulent misrepresentation;
- breach of the terms implied by section 12 of the Sale of Equipment Act 1979;
- defective products under the Consumer Protection Act 1987; or
- any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

11.2 Subject to **clause 11.1**:

- the Supplier shall under no circumstances whatever be liable to the Hirer, whether in Contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect, special or consequential loss arising under or in connection with the Contract; and
- the Supplier's total liability to the Hirer 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 Hire Charges.

11.3 The Conditions set out the full extent of the Supplier's obligations and liabilities in respect of the Equipment and its hire to the Hirer. In particular, there are no conditions, warranties, or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier, except as specifically stated in these Conditions. Any condition, warranty, or other term concerning the Equipment which might otherwise be implied into or incorporated within the Agreement, whether by statute, common law or otherwise, is expressly excluded.

### 12 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network,

acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

### 13 TERMINATION

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

- the Hirer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;
- the Hirer commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
- the Hirer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; and

13.2 The Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

### 14 CONSEQUENCES OF TERMINATION

14.1 Upon termination of this Agreement, however caused:

- the Supplier's consent to the Hirer's possession of the Equipment shall terminate and the Supplier may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
- without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the Supplier on demand:
  - all Hire Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.4;
  - any costs and expenses incurred by the Supplier in recovering the Equipment and/or in collecting any sums due under this Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

14.2 Upon termination of this Agreement pursuant to Condition 13, any other repudiation of this Agreement by the Hirer which is accepted by the Supplier without prejudice to any other rights or remedies of the Supplier, the Hirer shall pay to the Supplier on demand 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 the Hire Period.

14.3 The sums payable pursuant to Condition 14.2 shall be agreed compensation for the Supplier's loss and shall be payable in addition to the sums payable pursuant to Condition 14.1. Such sums may be partly or wholly recovered from any Deposit.

14.4 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.

### 15 GENERAL

#### 15.1 Assignment and other dealings.

(a) 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 Agreement.

(b) The Hirer 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 Agreement without the prior written consent of the Supplier.

#### 15.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Agreement 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, fax or e-mail, save where sending a notice of termination which shall be sent by post or courier.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in **clause 15.2(a)**; 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 fax [or e-mail], one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 15.3 Severance.

(a) If any provision or part-provision of the Agreement 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 Agreement.

(b) If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.4 **Waiver.** A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the 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.

15.5 **Third party rights.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.

15.6 **Variation.** Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

15.7 **Governing law.** The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

15.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).