

HIRE TERMS & CONDITIONS

1 INTERPRETATION

The definitions and rules of interpretation in this condition apply in these terms and conditions:

Agreement: these terms and conditions and the Hire Specification.

Hire Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Hire Services.

Hire Services: the services set out in the Hire Specification.

Hire Specification: means the form to be completed and signed by the parties when booking the Hire Services.

Term: the Agreed Minimum Term period set out in the Hire Specification and subject to terms of this Agreement, in particular Clause 10.

VAT: value added tax chargeable under English law from time to time and any similar additional tax.

1.1 Headings in these conditions shall not affect their interpretation.

1.2 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to writing or written includes e-mail to the address set out in the Hire Specification.

2 AUTHORITY AND APPLICATION OF CONDITIONS

2.1 The Hire Specification duly completed by the Customer constitutes an offer by the Customer to rent the Hire Equipment and purchase the Hire Services. The Supplier's acceptance of the offer forms a contractual relationship between the parties and this shall be deemed to have commenced on the date of the last signature on the Hire Specification.

2.2 The signatories to this Agreement warrant that they are duly authorised on the Customers behalf to enter into the Agreement and hereby personally indemnifies the Supplier against all losses and costs that may be incurred by the Supplier if this is not the case.

3. HIRE SERVICES

3.1 Subject to clause 3.2, the Hire Services shall be provided exclusively by the Supplier on behalf of the Customer in accordance with the date and deliverables set out in the Hire Specification.

3.2 The provision of the Services to the Customer is on a non-exclusive basis and the Supplier shall have the right to assign and otherwise deal with this Agreement.

4 SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall hire the Equipment to the Customer for use at the Site(s) subject to the terms and conditions of this Agreement.

4.2 The Supplier shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Customer's quiet possession of the Hire Equipment.

4.3 The Supplier shall use reasonable endeavours to provide the Hire Services in a professional and diligent manner and to deliver the Hire Services and Hire Equipment to the Customer, in accordance in all material respects with the Hire Specification.

4.4 Delivery of the Hire Equipment shall be made by the Supplier. The Supplier shall use all reasonable endeavours to affect Delivery by the date and time agreed between the parties. Title and risk shall transfer in accordance with Clause 6 of this agreement.

4.5 The Customer shall procure that a duly authorised representative of the Customer shall be present at the Delivery of the Hire Equipment and to indicate the ideal locations for the Hire Equipment. The Customer shall ensure that the locations are free from hazards and suitable for the installation, the Supplier shall cause minimal damage in the fixing of the Hire Equipment to the locations but shall not be liable for 'making good' any holes or marks caused by installation or removal. Acceptance of Delivery and installation by such representative shall constitute conclusive evidence that the Customer has examined the Hire 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 as regards any latent defects not reasonably apparent on inspection) and that the location of the Hire Equipment is suitable. If required by the Supplier, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

4.6 The Supplier shall attend the Customer's Site(s) at reasonable notice or in accordance with the Hire Specification to perform inspections and carry out any repairs or maintenance. If the Supplier deems that the Hire Equipment requires updating or replacing they shall have the right to do so without the Customer's consent unless the replacement equipment is of a lower specification.

4.7 The Supplier shall use reasonable efforts to respond to any communications from the Customer or generated directly from the Hire Equipment regarding the Hire Equipment's operation within a reasonable time and subject to the availability of parts and/or suitably skilled technicians shall respond to any substantial break down of the Hire Equipment within 48 hours of receipt of written notice from the Customer or generated by message generated by the Hire Equipment.

5 CUSTOMER'S OBLIGATIONS

5.1 The Customer shall during the term of this agreement:

- (a) ensure that the Hire 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, manufacturer of the Hire Equipment or in accordance with best industry practise;
- (b) take such steps (including compliance with all safety and usage instructions) as may be necessary to ensure, so far as is reasonably practicable, that the Hire Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work or a guest or customer of the Customer or any other person who may have access to the Site(s);
- (c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Hire Equipment. The Customer shall under no circumstances attempt to repair, alter or maintain or contract with any third party to do the same, the Hire Equipment without prior authorisation from the Supplier who shall under this Agreement be contracted to repair, alter and maintain the Hire Equipment;
- (d) keep the Supplier fully informed of all material matters (including but not limited to damage, defects and technical issues) relating to the Hire Equipment;
- (e) keep the Hire Equipment at all times at the Site(s) and shall not move or attempt to move any part of the Hire Equipment to any other location without the Supplier's prior written consent;
- (f) permit the Supplier or its duly authorised representative to inspect the Hire Equipment on twenty four hour, 7 days a week basis without notice and for such purpose to enter upon the Site(s) or any premises at which the Hire Equipment may be located, and shall grant such keys, codes access and facilities for such inspection. This right shall include the Supplier's right to remove any Hire Equipment from the Site(s) for repair or maintenance off site;
- (g) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Hire Equipment;
- (h) the Customer must take all necessary steps to ensure that the Supplier may enter such Site(s) and recover the Hire 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 right for the Supplier to enter onto such land or building to remove the Hire Equipment;
- (i) not suffer or permit the Hire Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Hire Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Hire Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation; and
- (j) deliver up the Hire Equipment at the end of the Term or on earlier termination of this Agreement at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Site(s) or any premises where the Hire Equipment is located for the purpose of removing the Hire Equipment.

5.2 The Customer shall be solely responsible for the selection of locations for the installation of the Hire Equipment and shall use their best endeavours to indicate the most effective positions for the Hire Equipment. The Customer shall hold the Supplier harmless for any defects in the service quality and indemnify the Supplier against all costs relating to the selection of locations for the installation of the Hire Equipment.

- 5.3 The Customer acknowledges that the Supplier shall not be responsible for:
- (a) any loss of or damage to the Hire Equipment arising out of or in connection with any negligence, misuse, mishandling of the Hire Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors or any other third party not under the control of the Supplier, and the Customer 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 Supplier to comply with the terms of this Agreement;
 - (b) failure of the Hire Equipment to do that which it is designed and intended to do as a result of obstruction, vandalism or any other action caused by the Customer or its officers, employees, agents and contractors or any other third party whether or not they are authorised to be on the Site;
 - (c) anything causing failure or hindering the performance of the Hire Equipment which is beyond the control of the Supplier, including, but not limited to mobile network failure, positioning of the Hire Equipment, signal issues, network or power disruption and or adverse weather conditions;
 - (d) any failure or defect beyond the electronic messaging or notification over mobile networks by the Hire Equipment being communicated to third parties for any response to a potential triggering of the alarm, relevant inspection or visits, and as such the Supplier shall not be responsible for the failure of the performance of third parties who have been contracted to carry out any duties connected to the Hire Equipment or the failure of any notification to reach its intended target.
- 6 TITLE, RISK & INSURANCE**
- 6.1 The Hire Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Hire Equipment (save the right to possession and use of the Hire Equipment subject to the terms and conditions of this Agreement).
- 6.2 The risk of loss, theft, damage or destruction of the Hire Equipment shall pass to the Customer on Delivery. The Hire Equipment shall remain at the sole risk of the Customer during the Term and any further term during which the Hire Equipment is in the possession, custody or control of the Customer (Risk Period) until such time as the Hire Equipment is redelivered to the Supplier. During the Term and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
- (a) insurance of the Hire Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
 - (b) insurance for such amounts as a prudent owner or operator of the Hire Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Hire Equipment.
- 6.3 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Hire Equipment or arising out of or in connection with the Customer's possession or use of the Hire Equipment.
- 6.4 In any event the Customer shall remain liable for the full replacement cost of the Hire Equipment if it is lost, stolen or damaged beyond repair together with any other related costs and damages (whether direct or indirect) until the Hire Equipment is replaced whether or not the Customer affects insurance or if the insurance company makes or fails to make a payment to the Customer.
- 7 HIRE FEE AND PAYMENT**
- 7.1 In consideration of the rental of the Hire Equipment and provision of the Hire Services, the Customer shall pay the fees as specified and in the manner set out in the Hire Specification. Any additional services (including but not limited to repairs, upgrades or programming) or equipment beyond those specified shall be agreed between the parties in good faith.
- 7.2 Unless otherwise expressly agreed in writing, our payment terms are strictly 30 days from the date of the invoice.
- 7.3 All fees and charges quoted to the Customer shall be exclusive of VAT, which shall be added to invoices at the current rate.
- 7.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier as specified in the Hire Specification or on the due date, the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
 - (b) suspend all Hire Services until payment has been made in full; and
 - (c) remove any Hire Equipment from the Site(s).
- 7.5 Time for payment shall be of the essence in this Agreement.
- 7.6 All sums payable to the Supplier under this Agreement shall become due immediately on its termination, despite any other provision. This condition 7.5 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 7.7 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 8 CANCELLATION**
- 8.1 The Customer must notify the Supplier in writing of any cancellation or reduction of the Hire Services.
- 8.2 The Supplier shall be entitled to levy the following charges in the event of a cancellation:-
- (a) Cancellation 30 days or less prior to Delivery Date start 25% of total Hire Fees
 - (b) Cancellation 14 days or less prior to hire period start 50% of total Hire Fees
 - (c) Cancellation 7 days or less prior to hire period start 100% of total Hire Fees
- 9 LIMITATION OF LIABILITY**
- 9.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 9.2 Nothing in this Agreement limits or excludes the liability of either party:
- (a) for death or personal injury resulting from negligence; or
 - (b) for any damage or liability incurred by the other party as a result of fraud or fraudulent misrepresentation by that party.
- 9.3 Subject to condition 9.1:
- (a) The Supplier shall not be liable for:
 - (i) loss of profits;
 - (ii) loss of business;
 - (iii) depletion of goodwill and/or similar losses;
 - (iv) loss of anticipated savings;
 - (v) loss of goods;
 - (vi) loss of contract;
 - (vii) loss of use;
 - (viii) loss of corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - (b) The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of this Agreement shall be limited to the value of the contract in relation to the Hire Services.
- 10 TERMINATION**
- 10.1 This Agreement shall continue for the Term and shall be deemed to continue for a further period of one month (subject to any reasonable adjustments to the Fees in accordance with RPI (the start date of the contract being the base year) unless the Customer or the Supplier provide the other, post the period of the Agreed Minimum Term, with no less than 14 days written notice of cancellation of any given monthly period.
- 10.2 Subject to clause 10.3 either party may terminate this Agreement without liability to the other party on giving written notice if the other party commits a material breach in relation to this Agreement, and doesn't remedy the breach when notified to do so if the breach is capable of remedy.
- 10.3 The Supplier may terminate this agreement and recover the Hire Equipment immediately if the Customer fails to pay any amount due under this Agreement on the due date.

10.4 On termination of this Agreement for any reason:

- (a) The Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices, expenses and interest and, in respect of Hire Services supplied but for which no invoice has been submitted, Supplier may submit an invoice, which shall be payable immediately on receipt; and
- (b) The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

11 FORCE MAJEURE

Neither party shall have liability to the other party under this Agreement if it is prevented from, or delayed in performing, its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of either party to this Agreement or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm.

12 VARIATION

Save where the Supplier reasonably requires or is obliged by contract, regulation or law, no addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties. The Supplier reserves the right to vary the specification of the Hire Equipment from time to time without notice but subject to the specification of the replacement equipment being as good as or better than that it replaced.

13 WAIVER

- 13.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. 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.
- 13.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

14 RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

15 NOTICES

- 15.1 Any
 - (a) legal notice shall not be binding unless in writing and may be given by hand delivery or prepaid first class post only;
 - (b) other notice or other communication given or made under this Agreement shall be in writing and may be given by either hand delivery, prepaid first class post, facsimile transmission or electronic mail.
- 15.2 Any such notice which is given in accordance with condition 15.1, shall be deemed to have been received 48 hours after sending if addressed to the contact details set out in the Hire Specification.

16 GOVERNING LAW AND JURISDICTION

- 16.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 16.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter.