

TERMS AND CONDITIONS OF HIRE/SALE

- A. SALE AND HIRE**
- 1. GENERAL**
All quotations are made and all orders are accepted subject to the following conditions. All other conditions whatsoever are excluded from the contract or any variation thereof unless expressly accepted by the Supplier in writing.
The Supplier's employees or agents are not authorised to make any representations concerning the equipment unless confirmed by the Supplier in writing. In entering into the contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2. PRICES**
The contract price shall be the Supplier's quoted price or where no price has been quoted for a quoted price is no longer valid) the contract price shall be the current price of the Supplier at the date of acceptance of the order. The Supplier's quotation is open for acceptance for 28 days. The Supplier reserves the right to increase prices thereafter. The quotation may be renegotiated should the original quantities or requirements change. After acceptance the Supplier may increase any price including that of any equipment already on hire on 28 days notice in writing to the Customer. Prices are exclusive of any applicable value added tax which the Customer shall be additionally liable to pay to the Supplier at the applicable rate which is from time to time in force.
Except as otherwise stated under the terms of any quotation or in any price list of the Supplier and unless otherwise agreed in writing between the Supplier and the Customer all prices are given by the Supplier on an ex works basis.
- 3. TERMS OF PAYMENT**
Payment is due immediately on invoice, unless the Customer has an approved credit account confirmation of which has been given in writing by the Supplier in which case payment will be due 30 days from the date of the invoice. If any sums remain unpaid after the due date all charges for hire or sale no matter how recent shall become due immediately. Invoices will be presented at regular intervals during any period of hire.
The Supplier reserves the right to suspend further supplies from existing or any other orders until all overdue debts have been discharged as payment in full of the essence. An authorised Credit Account will be granted at the Supplier's discretion where a level of credit approval has been granted by the Supplier and the Customer has agreed the Supplier's terms of business. The continuation of credit facilities will be reviewed periodically and may be terminated at the Supplier's discretion in which case invoices including existing invoices will be immediately payable.
Where a Customer does not have an approved Credit Account, before any period of hire begins the Customer shall pay the minimum hire charge and a deposit of a value specified from time to time to be calculated in accordance with the Supplier's list prices ruling, which will be held as security until the return in good order of the equipment hired and the payment of all sums due.
- 4. AUTHORITY**
4.1. The person making the contract with the Supplier warrants that he/she has the authority of the Customer to make this contract on the Customer's behalf and hereby agrees to indemnify the Supplier against losses and costs that may be incurred by the Supplier if this is not so.
4.2. **Proof of Acceptance**
Upon delivery the Customer shall sign the Delivery Note which shall be conclusive proof of the receipt of the equipment by the Customer and of the acceptance of these conditions.
- 5. COLLECTION**
5.1. If the equipment is collected by the Customer the Customer shall make a check of the equipment once loaded and sign the Delivery Note before leaving the Supplier's premises as conclusive proof of the receipt of the equipment shown on the Delivery Note.
5.2. **Delivery Charges**
Where the delivery or collection is organised by the Supplier the Customer shall pay a delivery or collection charge at the Supplier's standard transport packaging and insurance rates applicable.
Such charges may include any wasted journey or transport time reasonably incurred by the Supplier in attempting to comply with the specific or implied requirements of the Customer. The Customer shall sign the Delivery Note as conclusive proof of the acceptance of the equipment.
5.3. **Delivery/Collection Liability**
Every reasonable effort will be made by the Supplier to keep to the dates given for delivery or collection but the Supplier accepts no liability in case of failure to do so unless an express guarantee in writing has been given by the Supplier to effect delivery by a specified time. No returns of hired equipment will be accepted on Saturdays or Sundays or outside normal office hours.
No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit) costs damages charges and expenses incurred by the Supplier including consequential loss and loss of hire income. If the Customer requires the delivery of any equipment on hire to be postponed to a later date than originally agreed upon the Supplier reserves the right to charge for the hire as from the original contract date.
All components are to be returned in the exact dimension supplied. Only equipment provided by the Supplier and identified by the Supplier as such will be accepted at the end of the hire period.
- 5.4. Customer's Responsibility For Acceptance Of Equipment**
Unless any alleged discrepancy is reported to the Supplier by letter received from the Customer within 5 working days of the Delivery Note the Delivery Note shall be conclusive proof of delivery of the equipment set out therein. Small deviations or variations from particulars of equipment shall not give rise to any claims.
If the Customer refuses or fails to take delivery of equipment tendered in accordance with the contract the Supplier shall be entitled to immediate payment for the equipment so tendered. The Supplier shall be entitled to store at the risk of the Customer any equipment which the Customer refuses or fails to take delivery of and the Customer shall pay the costs of such storage and any additional costs including carriage. Refusal by the Customer to take delivery will relieve the Supplier from the obligation to make further deliveries without prejudice to the Supplier's right to recover damages for such refusal.
If the Customer or the representative thereof is not present when the equipment is delivered then the Supplier will despatch a Delivery Note to the Customer.
Where equipment is to be delivered by a courier on behalf of the Supplier the risk therein passes to the Customer upon delivery. When the Customer arranges for the collection of the equipment delivery will be deemed as effective and the risk therein to have passed to the Customer upon the transfer to the courier in question.
- B. PROVISIONS ONLY APPLICABLE TO HIRE**
- 6. RETURN/COLLECTION OF HIRE EQUIPMENT**
The Customer undertakes at the termination of the hire period to return the equipment to the Supplier's depot from which it was originally hired in a clean and sound condition. The Customer must give at least 48 hours notice in writing of his intention to end the hire period and obtain an off hire reference from the Supplier. Hire charges will cease from that agreed date provided that the equipment is returned within the period of notice. For this purpose Saturdays, Sundays and all bank and public holidays are not working days. Accounting procedures for off hire equipment will always take place after return to the Supplier's yard.
If the Supplier agrees to collect the equipment upon termination from a location specified by the Customer, at an agreed carriage charge, counting procedures for off hired equipment collected will take place only after return to the Supplier's yard. If the Supplier is unable for whatever reason to collect any off hired equipment from the location specified by the Customer, the Customer shall be bound to pay the Supplier's carriage charge in any event, and the equipment will continue to attract hire charges until subsequently recovered by the Supplier.
The Customer shall, at the request of the Supplier, inform the Supplier in writing within one working day of the receipt of such request of the location of all equipment currently on hire. The Customer shall permit the Supplier and any person authorised thereby at all times to enter the premises on which the equipment is situated to inspect and examine the equipment. The Supplier may at its discretion render a charge for the value of the equipment should there be any reason to doubt the continuing possession and control of the equipment by the Customer.
- 7. NON-RETURNED HIRE EQUIPMENT**
The Customer accepts full responsibility for the care, safekeeping and return in good order of the equipment, and shall at all times keep it in its possession and control until such time as the Supplier takes the equipment back into the Supplier's own possession.
The Customer will pay to the Supplier all costs incurred by the Supplier in rectifying the condition of any equipment returned damaged or unclear. Additionally the Customer will pay to the Supplier a charge equating to the financial losses reasonably incurred by the Supplier while such rectification is carried out.
The Customer shall notify the Supplier immediately upon the loss of any of the equipment, howsoever arising, and shall be liable to pay the hire charges in respect of the lost equipment up to and including the date on which notification of loss is received by the Supplier.
In the case of equipment loss through theft the Customer shall also report the loss as soon as is reasonably practicable to the police and as soon as reasonably practicable thereafter obtain and advise the Supplier of the crime report number.
The Supplier reserves the right to continue to levy hire charges until any and all sums due under this paragraph 7 above have been recovered from the Customer.
- 8. INSURANCE AND RESPONSIBILITY FOR LOST/STOLEN HIRE EQUIPMENT**
The Customer agrees to pay to the Supplier the full new list sale rate for any equipment which is lost or stolen or damaged beyond economic repair, and without any deduction for usage, wear and tear or age and should insure the goods on that basis.
All monies received by the Customer from an insurance company or from any other source in settlement of any claim relating to the loss, theft or damage of equipment, shall, to the extent that any payment is due to the Supplier under this condition, be held in trust by the Customer (or successor/assigned body) and paid to the Supplier on demand.
In the event of loss or damage to the equipment the Supplier's account shall be payable in full on demand and such payment shall not be conditional on prior recovery by the Customer of any sums under a policy of insurance or from any other source. Notwithstanding this condition, to the extent that any payment remains due to the
- Supplier under it, all monies to the amount of that payment received by the Customer from a policy of insurance or any other source in settlement of a claim relating to the loss, theft or damage of the equipment shall be held by the Customer on trust for the Supplier and paid to the Supplier on demand.
- 9. RECOVERY OF HIRE EQUIPMENT**
The Customer shall take all practical steps to secure a proper return of lost or stolen hire equipment. In the event of lost or stolen equipment being subsequently recovered and returned by the Customer to the Supplier the Customer will be credited with the value of that equipment less the appropriate hire charges from the date on which the Supplier received notification of loss to the date of return.
The equipment, notwithstanding its loss or theft and any payment from the Customer to the Supplier in respect thereof, will at all times remain the property of the Supplier. The value of any equipment thereafter returned to the Supplier by the Customer will be credited to the Customer and all hire charges in respect of this equipment will be re-installed up to and including the time the equipment is returned to the Supplier.
- 10. MAINTENANCE OF EQUIPMENT**
The Customer will keep acquainted with the state and condition of the equipment and ensure it remains safe, serviceable and clean. Any breakdown or any unsatisfactory working of the equipment must be immediately notified in writing to the Supplier.
- 11. DAMAGE**
All equipment will be inspected on its return to the Supplier's premises. Any such equipment in the opinion of the Supplier deemed to be damaged or unusable will be charged for at the Supplier's rates, specified from time to time.
Before levying such charge the Supplier will serve 7 days notice upon the Customer and during that period will permit the Customer the opportunity at any reasonable time to inspect the damage for which the charge is made.
- 12. SAFETY**
The Supplier will provide the Customer with appropriate instructional material where reasonably practicable and the Customer will ensure that this is passed on to the operatives using the equipment whom the Customer shall in any event ensure are competent in the erection and/or use of the equipment by reason of such operatives having received adequate training therein.
- 13. PERIOD OF HIRE**
The date of collection or delivery will be the effective date of the commencement of hire charges. All equipment is subject to a minimum hire period of 2 weeks. After the minimum hire period has been reached hire charges are calculated weekly, fractions of a week being charged on a daily basis, the charge for one day being 1/7th of the weekly charge. The date of despatch and the date of return shall be whole days.
No allowance will be made for holiday periods or inclement weather or for any reason whatsoever beyond the Supplier's control including strikes, lock-outs, cessation of labour, transport delays, government interference or control or any other cause or contingency. The Supplier may at its sole discretion and subject to availability and at the request of the Customer, add, subtract or substitute to the equipment let on hire without creating a modifying agreement within the meaning of the Consumer Credit Act 1974.
- 14. OWNERS RIGHTS**
Where the Customer takes the equipment on hire intending to rehire the equipment to a third party, the Customer is deemed to retain control of the equipment whether or not it might remain in the Customer's possession. The Customer shall be solely responsible for the payment of all hire charges raised by the Supplier and for all charges raised by the Supplier in respect of damage to or loss of the equipment. It is the sole responsibility of the Customer to return the equipment to the Supplier. The Supplier will not deal directly with any third party in this context.
- C. PROVISIONS APPLICABLE TO SALE ONLY**
- 15. RETENTION OF TITLE**
The equipment shall remain the sole and absolute property of the Supplier as legal and beneficial owner until such time as the Customer shall have paid to the Supplier the agreed price for the equipment together with the full price for any other equipment the subject of any contract of sale or hire with the Supplier.
Until such time as the Customer becomes the owner of the equipment it will store them on its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the equipment of the Supplier.
The Customer acknowledges that until such time as the property in the goods passes to the Supplier it is in possession of the equipment as a bailee of the Supplier.
The Supplier may for the purpose of recovery of its equipment enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- D. SALE AND HIRE**
- 16. OUTSTANDING ACCOUNTS AND PAYMENT**
The Supplier reserves the right to charge compound interest at the rate of one and a half per cent per month (on a daily basis) on all sums outstanding after the date for due payment. This entitlement to interest shall be without prejudice to the Supplier's right to terminate any contract by reason of non-payment. Interest shall continue to accrue after such termination until payment of all overdue amounts has been received before as well as after judgment.
All prices quoted will be deemed to be the Supplier's list prices unless agreed by the Supplier in writing. Any prices agreed which differ from the Supplier's list prices will only remain applicable on the condition that the Supplier's normal payment terms will be complied with.
In the event that those payment terms are not complied with, full charges may be substituted thereafter.
Should a dispute arise in respect of any specific item described in any specific invoice, the Customer shall not be entitled during the course of this dispute to withhold any sums for payment beyond those specifically relating to the disputed items. A counterclaim against the Supplier will only be accepted for deduction from any payment made to the Supplier where the Supplier has agreed to such deduction in writing. Counterclaims will only be considered for acceptance between the parties to this contract. No amount which might be due for payment to an associate company or to the parent company of the Customer will be deemed to be acceptable as a counterclaim in this context.
- 17. TERMINATION**
If the Customer commits any breach of this or any other contract with the Supplier, or ceases business, or stops payment to or makes any deed of arrangement, assignment or composition with its creditors or being a Supplier enters into liquidation whether compulsory or voluntary (except liquidation for purposes of reconstruction or amalgamation) or suffers or allows the appointment of a receiver, administrator or provisional liquidator, or suffers any distress or execution whether legal or equitable or any attempt thereat upon any of the Customer's property, or has an unsatisfied judgment against it for 14 days or more, or permits any act of bankruptcy, or has an order or notice of resolution for winding up proposed or made against it or dishonours any cheque drawn upon it, then the Customer shall be deemed to have repudiated this contract. The Supplier may then immediately repossess any equipment owned by the Supplier and recover any monies due as well as damages for repudiation without prejudice to any other rights and remedies.
- 18. CUSTOMERS INDEMNITY**
The Customer shall indemnify the Supplier against any loss, damage, claims or proceedings, and against any cost or expense arising out of or in connection therewith, in respect of any injury to or death of any person or damage to any property real or personal caused by or arising out of or in the course of the use or mis-use of the equipment by any person (other than that caused by the negligence of the Supplier) or arising out of this contract. The Customer shall effect and keep in force at all times policies of insurance in respect of the Customer's liability under this condition.
- 19. WARRANTY**
The equipment supplied hereunder is warranted to be within normal limits of industrial quality. The Supplier warrants that it will at its option, repair or replace equipment supplied by the Supplier which is when delivered defective or in respect of which under proper use defects appear within three months after despatch, provided that the equipment which the claim relates is returned to the Supplier within that period of three months carriage paid. Returned equipment must be accompanied by an advice note stating the original invoice number in respect of the equipment and the nature of any claim or defect, together with such further information as the Supplier may at the time of supply have stipulated. This warranty shall be in lieu of any warranty or condition implied by law as to quality, fitness for any particular purpose or correspondence with sample except any implied by law which by law cannot be excluded.
- 20. LIABILITY**
The Supplier's liability in respect of direct loss or damage to physical property not being the equipment supplied shall not exceed £100,000.00 for each event or series of connected events in relation to which the claim arises. Otherwise the Supplier's liability, whether in respect of one claim or in aggregate, arising out of any contracts shall not exceed the purchase price payable under the contract or if applicable three months hire charges under the contract for such part or parts of the equipment in respect of which the Supplier's liability shall arise.
The Supplier shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any duty at common law or under the express terms of the contract for any loss of profit or business or indirect special or consequential loss or damage costs expenses or other claims for consequential compensation whatsoever which arise out of or in connection with the supply of the equipment or their use or resale by the Customer and the entire liability of the Supplier under or in connection with the contract shall not exceed the sale price of the relevant equipment, or if applicable three months hire charges, except as expressly provided in these conditions.
The Supplier shall not be liable for any damage, loss or expense caused to the Customer by circumstances beyond the Supplier's reasonable control (including weather, industrial action, shortages of labour or materials or fault of contractors, sub-contractors or others not in the direct employ of the Supplier). Nothing in these conditions shall exclude or restrict the Supplier's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation.
- 21. LAW**
This contract will be subject to English law and the parties submit to the non-exclusive jurisdiction of the English Courts.