

These Standard Terms and Conditions apply to all purchases and hires from Brandon Hire Limited and Phoenix Surveying Equipment Limited.

These terms and conditions are split into the following Sections: Section 1 (General) which applies to all sales; Section 2 (Hired Goods) which contains additional provisions applicable to hires only; Section 3 (Online shop) which applies to website sales; and Section 4 (Consumers) which applies to consumers. For example, if you purchase goods as a consumer (i.e., you are purchasing goods for domestic rather than business purposes) at one of our outlets then Sections 1 and 4 will apply (but not Sections 2 and 3). Those clauses and sub clauses marked (*) do not apply to consumers.

Please let us know if you do not understand this or if you are not sure whether or not you are a consumer. If you are a consumer then please read Section 4 (Consumers) first.

These Standard Terms and Conditions shall not be amended without the prior written agreement of a director of the Supplier. The Supplier will not be bound by any change purported to be made by any of the Supplier's staff unless a director of the Supplier confirms in writing that the change is agreed.

Furthermore if there is any inconsistency between these terms and conditions on the one hand and any other documentation or information which we to provide to you, then to the extent of any conflict, these terms and conditions will prevail (this paragraph does not apply if you are a consumer).

Section 1: (General)

1 Definitions and interpretation

1998 Act: the Late Payment of Commercial Debts (Interest) Act 1998.

Charges: all of the following: (a) any Hire Charges; (b) the charges for any Purchased Goods; (c) the charges for any Services; (d) any interest due by the Customer to the Supplier under the Contract; and (e) any other sums payable under, or in connection with, the Contract. Any Deposit shall form part of the Charges.

Contract: the agreement under which the Supplier will provide Goods and/or Services to the Customer consisting of the Terms and Conditions and any Order Confirmation

Customer: the person described as such on the Order Confirmation;

Damage Waiver: has the meaning given in clause 7.1 of Section 2 (Hires);

Damage Waiver Charge: has the meaning given in clause 7.1 of Section 2 (Hires);

Deposit: any payment required by the Supplier in relation to the Hired Goods which is to be held as security by the Supplier;

Force Majeure: anything outside of a party's reasonable control, including any of the following to the extent that it is beyond a party's reasonable control: government action, change in the law, acts of God, flood, drought, earthquake, windstorm or other disaster; epidemic or pandemic or a realistic prospect of either; outbreak of Swine Flu, Avian Flu, or any similar disease; terrorist attack, war including civil war, civil commotion or riots; change in law; fire, explosion or damage (including malicious damage); loss during transport; adverse weather conditions (including unusual temperatures); interruption or failure of utility service, including, but not limited to, electric power, gas or water; any labour dispute, including, but not limited to, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors; collapse of building structures; or failure to obtain raw materials, failure of machinery (other than Goods) or computers.

Goods: any products or goods, including any machines, articles, tools, equipment, devices supplied by the Supplier to the Customer, including Hired Goods and Purchased Goods. Goods also include any consumables purchased for use with Hired Goods and such consumables shall be Purchased Goods.

Hire Charges: The Supplier's charging rate for the hire of the Hired Goods which is current from time to time during the Hire Period;

Hired Goods: Goods which are, or are to be, hired to the Customer;

Hire Period: the period commencing when the Customer receives the Hired Goods on hire (including Saturdays Sundays and Bank Holidays) and ending upon the happening of any of the following events: (i) the physical return of the Hired Goods by the Customer into the Supplier's possession; or (ii) the physical repossession or collection of Hired Goods by the Supplier;

Liability: any liability whatsoever, the consequences arising from the liability, any direct, indirect or consequential loss, damage, costs or expenses resulting from the liability, whether the liability arises as a result of breach of the Contract, breach of statutory duty, liability in tort or otherwise, and even if the liability results from a party's negligence or from negligence for which that party would otherwise be liable;

Order Confirmation: any document supplied by the Supplier to the Customer setting out the particulars of the order. An Order Confirmation may be called a dispatch confirmation or, in respect of online sales, may be sent by email.

Purchased Goods: Goods which are, or are to be, sold to the Customer;

Relevant Purchased Goods: Purchased Goods where ownership in those Purchased Goods has not transferred to the Customer in accordance with clause 5.2.

Services: means the services and/or work (if any) to be performed by the Supplier for the Customer including repairs, sharpening and where agreed by the Supplier, any delivery and/or collection service for Hired Goods.

Supplier: the organisation named on the Order Confirmation being either Brandon Hire Limited, a company registered in England and Wales with company number 01008351 (VAT number 997 320 973) or Phoenix Surveying Equipment Limited, a company registered in England and Wales with company number 01336159 (VAT number 302607402). Brandon Hire Limited and Phoenix Surveying Equipment Limited both have their registered office address at 72-75 Feeder Road, St Philips, Bristol BS2 0TQ

Terms and Conditions: these terms and conditions consisting of Section 1 (General), Section 2 (Hired Goods), Section 3 (Online sales); and Section 4 (Consumers) and any documents referred to therein.

Trigger Event: any of those events listed in clause 6.1.

Any words following the terms **including, include, in particular, for example**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

A reference to a clause in the Terms and Conditions is a reference to a clause in that Section of the Terms and Conditions. For example, a reference to "clause 2" in Section 1 (General) is a reference to clause 2 of Section 1 (General).

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2 Warranty

2.1 Subject to clause 2.3 the Supplier warrants that:

2.1.1 it will carry out its obligations under the Contract with reasonable skill and care; and

2.1.2 the Goods will conform in all material respects with their description, be of satisfactory quality, and be reasonably fit for the purposes for which products of that kind are commonly supplied.

2.2 The warranty in clause 2.1.2 shall apply for six months from when the Goods were hired or sold (as the case may be), or if shorter, and in respect of Hired Goods, the duration of the hire.

2.3 The Supplier will not be liable to the extent that Goods are covered by the manufacturer's warranty.

3 Payment

3.1 If the Supplier has agreed monthly credit terms with the Customer, invoices from the Supplier to the Customer must be paid by the last day of the calendar month following the date of the invoice. For example, if an invoice is dated 4 September then payment must be made by 31 October. If no monthly credit terms have been agreed by the Supplier then the Supplier's invoices are due for payment when an order for the Goods and/or Services is placed or, if agreed in advance by the Supplier, when the Goods and /or Services are delivered or supplied.

3.2 The amount of the Charges shall be as quoted to the Customer or otherwise as shown in the Supplier's current price list from time to time.

3.3 Where a Deposit is required for the Hired Goods it must be paid in advance of the Customer hiring the Hired Goods.

3.4 Payment of the Charges by the Customer on time in accordance with the provisions of the Contract is a condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash or cleared funds in respect of the full amount outstanding.

3.5 (*) If the Customer fails to make any payment in full by the due date, then:

3.5.1 All sums payable under the Contract, any other contract between the Supplier and the Customer, and any contract between a The Supplier Group Company and the Customer, shall immediately become due and payable; and

3.5.2 The Supplier may charge the Customer interest (both before and after judgment/decreed) on the amount unpaid at the rate implied by law under the 1998 Act (where applicable) or at the rate of 2.5% per month, whichever is higher.

3.5.3 Regardless of whether or not the Supplier is claiming interest under the 1998 Act the Supplier shall be entitled to recover all sums which it would have been entitled to recover under the 1998 Act if it had charged interest under the 1998 Act. Such sums shall include the compensation charges referred to in clause 5A of the 1998 Act, (the amount of compensation being determined in accordance with the principles set out in the 1998 Act).

- 3.6 (*) The Customer shall pay all sums due to the Supplier under the Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 3.7 (*) The Customer shall be deemed to have accepted the Charges due as set out on an invoice unless it informs the Supplier within 14 days of the date of the invoice that it disputes the Charges as set out on the invoice.
- 3.8 Prices exclude VAT which shall be added by the Supplier. However, if the rate of VAT changes between the date of the order and the date of delivery, the Supplier will, if permitted by law, adjust the VAT the Customer pays, unless the Customer has already paid for the Goods in full before the change in VAT takes effect.
- 3.9 Customer owned equipment in the Supplier's possession shall be held securely for the duration of any necessary quotation, service and repair work. After the required work has been completed, the Supplier will make reasonable efforts to contact the Customer for a three month period. Should this period lapse without confirmed contact and the instruction from the Customer, the Supplier reserves the right to:
- 3.9.1 dispose of Customer owned equipment at its discretion; and/or
- 3.9.2 sell Customer owned equipment at its discretion and retain the proceeds of sale after, applying the monies in accordance with clause 3.10, on trust for the Customer
- 3.10 In respect of clauses 3.9.1 and 3.9.2 above the Supplier shall apply any monies arising as a result of disposal, sale or hire against any debt outstanding from the Customer to the Supplier.
- 3.11 If the initial hire is paid by credit card and the hire is extended, then the Supplier reserves the right to charge the credit card with any unpaid charges arising from the additional hire. The Supplier shall inform the Hirer where such charges are made.
- 3.12 The Supplier may, but shall not have any obligation to, deduct any amounts owing at any time from any Deposit.
- 3.13 Should the Services include delivery of Goods by the Supplier, the Supplier will be liable for the Goods during transportation and delivery.

4 **Credit**

- 4.1 The Customer's credit limit shall be as specified by the Supplier from time to time.
- 4.2 The Supplier may, in its absolute discretion, reduce the Customer's credit limit.
- 4.3 Where Goods are supplied in excess of this limit (for any reason) at the request of the Customer, the Customer's employees, staff, servants or agents, any other person, purporting to act on behalf of the Customer, or any person authorised by the Customer to make use of the account, then the Customer will be held responsible for the entire account, including the excess. In such circumstances, the Customer shall reduce the Customer's balance to within the credit limit by the end of the calendar month during which the credit limit was exceeded.

5 **Risk and ownership**

- 5.1 Risk in the Goods will pass immediately to the Customer when they leave the physical possession or control The Supplier.
- 5.2 Title to Purchased Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- 5.2.1 such Purchased Goods; and
- 5.2.2 all other sums which are or which become due to the Supplier from the Customer.
- 5.3 Until title to the Purchased Goods has passed to the Customer, the Customer shall:
 - 5.3.1 hold such Purchased Goods on a fiduciary basis as the Supplier's bailee;
 - 5.3.2 store such Purchased Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to such Purchased Goods; and
 - 5.3.4 maintain such Purchased Goods in satisfactory condition and, if requested by the Supplier in writing, keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is acceptable to the Supplier (acting reasonably). The Customer shall obtain an endorsement of the Supplier's interest in the Purchased Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect the Purchased Goods and the insurance policy,but the Customer may resell or use the Purchased Goods in the ordinary course of its business.

6 Breach of the Contract

- 6.1 If the Customer:
 - 6.1.1 fails to make any payment to the Supplier when due (whether under the Contract or otherwise);
 - 6.1.2 commits a material breach of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
 - 6.1.3 persistently breaches the terms of the Contract;
 - 6.1.4 fails to return to the Supplier the Hired Goods by the due date for return;
 - 6.1.5 otherwise fails to return to the Supplier the Hired Goods when the Supplier has, in accordance with its rights under the Contract, requested that the Hired Goods be returned;
 - 6.1.6 causes or allows to be caused the loss of, or damage to, the Goods;
 - 6.1.7 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
 - 6.1.8 pledges, charges or creates any form of security over any Hired Goods or Relevant Purchased Goods or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, or if any distress/diligence, execution or other legal process is levied on any property of the Customer, or the Customer has a Bankruptcy Petition/Petition for Sequestration presented against it or the Customer takes or suffers any similar action in any jurisdiction;

- 6.1.9 being a company, ceases or threatens to cease to carry on business, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner is appointed over all or any of its assets, any attachment order/arrestment is made against the Customer, any distress/diligence, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;
- 6.1.10 appears reasonably to the Supplier due to the Customer's credit rating to be financially unable to meet its obligations under the Contract; and/or
- 6.1.11 appears reasonably to the Supplier to be about to suffer any of the above events;
- each, a **Trigger Event**, then the Supplier shall have the rights set out in clause 6.2.
- 6.2 The Customer acknowledges and agrees that if a Trigger Event has occurred then the following shall apply:
- 6.2.1 The Customer shall, at the Supplier's request, promptly return any Relevant Purchased Goods, and any Hired Goods to the Supplier.
- 6.2.2 The Supplier may recover any Relevant Goods, or Hire Goods, in accordance with clause 7 of this Section, and clause 6 of Section 2 (Hired Goods);
- 6.2.3 The Supplier may, without Liability, withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with the Customer;
- 6.2.4 The Supplier may immediately cancel, terminate and/or suspend, in whole or in part, and without Liability, the Contract and/or any other contract with the Customer;
- 6.2.5 (*) all monies owed by the Customer to the Supplier in respect of the Relevant Purchased Goods shall immediately become due and payable;
- 6.2.6 (*) all monies, owed by the Customer to the Supplier, other than those referred to in clause 6.2.5, shall immediately become due and payable.
- 6.3 If any Trigger Event occurs, the Customer will be liable for the costs arising from loss or damage to Goods including but not limited to the costs of replacement, repair and/or recovery.
- 7 (*) Recovery of Relevant Purchased Goods**
- 7.1 The Supplier may, if a Trigger Event has occurred, enter without prior notice, any premises of the Customer (or premises of third parties) where Relevant Purchased Goods are located in order to recover the Relevant Purchased Goods. The Customer warrants that the Supplier shall have all rights, licences and permissions required to enter the Customer's premises, and the premises of third parties, for the recovery of Relevant Purchased Goods.
- 7.2 Any recovery of Relevant Purchased Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach which occurred prior to the recovery of the Relevant Purchased Goods.
- 7.3 The Customer hereby grants the Supplier a licence to enter the premises of the Customer (or any third party premises where Relevant Purchased Goods are held) to enable the Supplier to recover the Relevant Purchased Goods in accordance with clause 7.1.

7.4 The Supplier may recover the costs, including but not limited to the costs of replacement, in respect of lost or damaged Goods, and nothing in clauses 7.1, 7.2, and/or 7.3 shall limit the Supplier's right to recover such costs.

7.5 The Supplier may recover the costs, including but not limited to the costs of replacement, in respect of Goods which the Supplier has been unable to collect because they have not been made available for collection by the Customer in breach of this agreement, and nothing in clauses 7.1, 7.2, and/or 7.3 shall limit the Supplier's right to recover such costs.

8 (*) Limitations of Liability

8.1 If the Customer is a consumer then the provisions of clause 4 of Section 4 (Consumers) shall apply instead of this clause 8.

8.2 The provisions of this clause 8, and the other Terms and Conditions of the Contract, are subject to clause 8.22.

8.3 Subject to clause 2, the Supplier does not provide any warranties or representations concerning the Goods or the Services and all warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.

8.4 The Customer warrants that it has inspected the Goods prior to the supply and is satisfied that the Goods are suitable for its needs save that the Customer shall not be in breach of this clause in respect of any Goods, where the Supplier is in breach of the warranty set out at clause 2.1.2 in respect of those Goods.

8.5 The Customer acknowledges and agrees that:

8.5.1 Any defective Goods must be returned to the Supplier for inspection (if requested by the Supplier) before the Supplier will have any Liability for defective Goods.

8.5.2 The Customer's remedy for any breach of any of the warranties or representations set out in the Contract (whether made innocently or negligently) by the Supplier is limited to breach of contract.

8.6 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer. Goods are made available for hire / sold subject to their being available. The Supplier shall not be held liable for any Liability suffered by the Customer as a result of any Goods being unavailable.

8.7 The Supplier has no Liability if, any monies due in respect of the Goods and/or the Services have not been paid in full by the due date for payment.

8.8 The Supplier has no Liability to the Customer for any delay and/or non performance of a Contract to the extent that such delay or non-performance is due to a Force Majeure event. If the Supplier is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

8.9 The Supplier has no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.

- 8.10 The Supplier has no Liability to the Customer to the extent that the Customer is covered by, or benefits from, any policy of insurance.
- 8.11 The Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.
- 8.12 The Customer remains liable for the Goods notwithstanding that the Supplier or Customer has insurance in place which would indemnify either the Supplier or the Customer.
- 8.13 The Supplier has no Liability to the Customer for any:
- 8.13.1 loss resulting from any inability to carry out any operations. For example, the Supplier shall not have any Liability if the Customer cannot complete a task because the Supplier supplied the wrong Goods;
 - 8.13.2 loss of use of plant or machinery or premises. For example, the Supplier shall not have any Liability for the Customer's inability to use any construction equipment the Customer has hired because the Supplier supplied the wrong safety equipment;
 - 8.13.3 consequential losses (including damage to goodwill);
 - 8.13.4 loss of profits;
 - 8.13.5 loss of income;
 - 8.13.6 economic and/or other similar losses;
 - 8.13.7 loss of anticipated savings;
 - 8.13.8 loss of data;
 - 8.13.9 wasted management or office time;
 - 8.13.10 special damages and indirect losses; and/or
 - 8.13.11 business interruption, loss of business, contracts and/or opportunity.
- 8.14 The Supplier may source Hired Goods from a third party. The Customer shall indemnify the Supplier against any Liability arising out of, or connected to, any claim brought by that third party, save to the extent that the Liability was a result of the Supplier's breach of the Contract or negligence.
- 8.15 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.
- 8.16 The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Supplier and arising from or due to any breach of contract, any tortious/delictual act and/or omission and/or any breach of statutory duty by the Customer.
- 8.17 In respect of Hired Goods: the Supplier's total Liability to the Customer under the Contract shall not exceed 5 times the amount of the Hire Charge and Charges for Services (if any) under the Contract, or the sum of £1,000, whichever is the higher.
- 8.18 In respect of Purchased Goods: the Supplier's total Liability to the Customer shall not exceed a sum equal to the Charges under the Contract for those Purchased Goods.

- 8.19 In respect of Services: the Supplier's total Liability to the Customer shall not exceed a sum equal to the Charges for the Services.
- 8.20 If the limitation on liability in clauses 8.17, 8.18, and 8.19 is or becomes invalid, illegal or unenforceable, then the Supplier's Liability shall be limited to the greater of
- 8.20.1 £5 million; and
- 8.20.2 The amount of the Supplier's insurance cover, to the extent that the Liability is actually met by such insurance.
- 8.21 The Provision and Use of Work Equipment Regulations 1998 requires the Supplier to provide all of the necessary components to erect tower scaffold safely in accordance with the manufacturer's instructions. The Supplier does not accept Liability for accident or injury caused by the Customer's use of incomplete towers, or the Customer's failure to erect the tower scaffold in accordance the manufacturer's instructions.
- 8.22 Regardless of anything else in the Contract, nothing in the Contract restricts the Supplier's Liability for (a) death or personal injury resulting from negligence for which it is responsible; (b) fraud; (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979; (d) defective products under the Consumer Protection Act 1987 (to the extent that this liability cannot be excluded); or (e) any other matter to the extent that it cannot be excluded or limited by law.

9 **General**

- 9.1 Subject to clause 9.2, a person who is not a party to the Contract shall not have any rights under it. A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 9.2 Clause 9.1 shall not apply to any finance company with whom the Supplier has an outstanding finance agreement relating to the Hired Goods. Such finance company shall, subject to the Supplier's consent, have the right to enforce this Contract as if they were the Supplier.
- 9.3 The Contract 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 and shall be subject to the exclusive jurisdiction of the English Courts.
- 9.4 If the Supplier fails, at any time during the term of the Contract, to insist upon strict performance of any of the Customer's obligations under the Contract, or if the Supplier fail to exercise any of the rights or remedies to which the Supplier is entitled under the Contract, this will not constitute a waiver of such rights or remedies and will not relieve the Customer from compliance with such obligations.
- 9.5 A waiver by the Supplier of any default will not constitute a waiver of any subsequent default.
- 9.6 No waiver by the Supplier of any of the Terms and Conditions will be effective unless it is expressly stated to be a waiver and is communicated to the Customer in writing.
- 9.7 The Customer shall not transfer, assign, charge or otherwise dispose of a Contract, or any of the Customer's rights or obligations arising under it, without the Supplier's prior written consent.

- 9.8 The Supplier may transfer, assign, charge, or otherwise dispose of a Contract, or any of its rights or obligations arising under it, at any time during the term of the Contract, save that, where the Customer is a consumer, the Supplier warrants that the Customer's rights shall not be reduced or prejudiced in any way as a result of such transfer, assignment, sub-contract, or other disposition.
- 9.9 The Supplier may subcontract its obligations under the Contract but the Supplier shall remain liable for the performance of its obligations to the same extent as it would have been but for the subcontracting. For example, the Supplier may hire to the Customer Goods which the Supplier has itself hired from a third party but the Supplier shall remain liable (to the extent set out in the Contract) if those Goods are faulty.
- 9.10 Upon termination of the Contract the provisions of the following clauses shall continue in full force and effect: Section 1: clauses 1 (Definitions and interpretation), 3 (Payment), 4 (Credit), 5 (Risk and ownership) 6 (Breach of Contract), 7 (Recovery of Relevant Purchased Goods), 8 (Limitations of liability), and 9 (General); Section 2: clauses 2 (Dealing in Hired Goods prohibited), 3 (Customer's obligations in respect of Hired Goods), 4 (Delivery, collection and services), 5 (Care of Hired Goods). 6 (Recovery of Hired Goods) and 9 (Delays, loss or damage); Section 3: clause 7 (The Supplier's refunds policy), 8 (The Customer's username and password); and Section 4: clause 2 (Consumer credit), 3 (Payment and interest) and 4 (Limitation of liability).
- 9.11 (*) The Terms and Conditions constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 9.12 (*) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misstatement, based on any statement in this agreement.
- 9.13 If any provision of this Contract is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

Section 2: (Hired Goods)

1 Introduction

- 1.1 The Terms and Conditions of this Section 2 (Hired Goods) shall apply in respect of Hired Goods only.
- 1.2 This Section 2 (Hired Goods) is in addition to, and does not replace, the other Sections of the Terms and Conditions.
- 1.3 As an exception, those clauses and sub clauses marked with (*) do not apply to consumers.

2 Dealing in Hired Goods prohibited

- 2.1 Ownership in the Hired Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hired Goods.
- 2.2 The Customer must not deal with the ownership, or any interest in the Hired Goods. This includes selling, assigning, mortgaging, pledging, charging, securing, withholding, exerting

any right to withhold, disposing of and/or lending. However the Customer may re-hire the Hired Goods to a third party with the prior written consent of the Supplier.

3 Customer's obligations in respect of Hired Goods

- 3.1 The Supplier may require the Customer to insure the Hired Goods on such reasonable terms and for such reasonable risks as the Supplier may specify. The proceeds of any such insurance that relate directly to the Hired Goods shall be held by the Customer in trust for the Supplier and be paid to the Supplier on demand. The Customer must not compromise any claim in respect of the Hired Goods and/or any associated insurance without the Supplier's written consent.
- 3.2 Risk in the Hired Goods will not pass back to the Supplier from the Customer until the Hired Goods are back in the physical possession of the Supplier. This shall apply even if the Supplier has agreed to cease charging the Hire Charges, the Hire Period has ceased, or if the Contract has expired or terminated.

4 Delivery, collection and services

- 4.1 It is the responsibility of the Customer to collect the Hired Goods from the Supplier and return them to the Supplier at the end of the Hire Period. If the Supplier agrees to deliver or collect the Hired Goods to and/or from the Customer it will do so at its standard delivery cost from time to time and such delivery and/or collection will form part of the Services.
- 4.2 Where the Supplier provides Services the persons performing the Services are servants of the Customer and once the Customer instructs such person they are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice except to the extent that the persons performing the Services are negligent.
- 4.3 The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to utilities for the Supplier's employees, sub-contractors and/or agents to allow them to carry out the Services. The Customer will ensure that the site where the Services are to be performed is, where necessary, cleared and prepared before the Services are due to commence.
- 4.4 If any Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation except where the Customer is acting as a consumer and the delay is due to a Force Majeure event.
- 4.5 Upon termination of the Contract, or the expiry of the Hire Period, the Customer shall immediately:
- 4.5.1 return the Hired Goods to the Supplier or if requested by the Supplier make the Hired Goods available for collection by the Supplier as instructed by the Supplier; and
 - 4.5.2 pay to the Supplier all arrears for, Charges, monies for any Goods and/or any other sums payable under the Contract.

5 Care of Hired Goods

- 5.1 The Customer shall:

- 5.1.1 not remove any labels from and/or interfere with the Hired Goods, their working mechanisms or any other parts of them and shall take reasonable care of the Hired Goods and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer;
 - 5.1.2 notify the Supplier immediately after any breakdown, loss and/or damage to the Hired Goods;
 - 5.1.3 take adequate and proper measures to protect the Hired Goods from theft, damage and/or other risks;
 - 5.1.4 notify the Supplier of any change of its address and upon the Supplier's request provide details of the location of the Hired Goods;
 - 5.1.5 permit the Supplier at all reasonable times and upon reasonable notice to inspect the Hired Goods including procuring access to any property where the Hired Goods are situated;
 - 5.1.6 subject to clause 2.2, keep the Hired Goods at all times in its possession and control and not to remove the Hired Goods from the country where the Customer is located and/or the country where the Supplier is located without the prior written consent of the Supplier;
 - 5.1.7 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hired Goods required by any legislation, best practice and/or operating instructions except to the extent that the Supplier has agreed to provide them as part of any Services;
 - 5.1.8 not do or omit to do anything which the Customer has been notified will or may be deemed to invalidate any policy of insurance related to the Hired Goods;
 - 5.1.9 not continue to use Hired Goods where they have been damaged and will notify the Supplier immediately if the Hired Goods are involved in an accident resulting in damage to the Hired Goods, other property and/or injury to any person; and
 - 5.1.10 where the Hired Goods require fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Hired Goods are properly installed by a qualified and competent person.
- 5.2 The Hired Goods must be returned by the Customer in good working order and condition and in the same condition that they were in prior to the hire, (fair wear and tear excepted) and in a clean condition together with all insurance policies, licences, registration and other documents relating to the Hired Goods.

6 **(*) Recovery of Hired Goods**

- 6.1 The Supplier may, if a Trigger Event has occurred, enter without prior notice, any premises of the Customer (or premises of third parties) where Hired Goods are located in order to recover the Hired Goods. The Customer warrants that the Supplier shall have all rights, licences and permissions required to enter the Customer's premises, and the premises of third parties, for the recovery of Hired Goods.
- 6.2 Any recovery of Hired Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach which occurred prior to the recovery of Hired Goods.

- 6.3 The Customer hereby grants the Supplier a licence to enter the premises of the Customer (or any third party premises where Hired Goods are held) to enable the Supplier to recover the Hired Goods in accordance with clause 6.1.
- 6.4 The Supplier may recover the costs, including but not limited to the costs of replacement, in respect of lost or damaged Goods, and nothing in clauses 6.1, 6.2, and/or 6.3 shall limit the Supplier's right to recover such costs.
- 6.5 The Supplier may recover the costs, including but not limited to the costs of replacement, in respect of Goods which the Supplier has been unable to collect because they have not been made available for collection by the Customer in breach of this agreement, and nothing in clauses 6.1, 6.2, and/or 6.3 shall limit the Supplier's right to recover such costs.

7 Damage waiver

- 7.1 The Supplier may offer, at its sole discretion, a damage waiver facility ("Damage Waiver") for certain Hired Goods upon payment of an additional charge (the "Damage Waiver Charge"). Where Damage Waiver is available as an option and the Customer has paid the appropriate Damage Waiver Charge the Supplier will waive any further charge for rectifying accidental damage to returned Hired Goods subject to the conditions below.
- 7.1.1 The Customer must notify the Supplier of the damage within 48 hours of the damage occurring.
- 7.1.2 The Damage Waiver does not apply and the Customer will continue in all respects to be fully responsible if the damage to Hired Goods was directly or indirectly the result of: (a) misuse or use contrary to instructions; or (b) malice or any deliberate act; or (c) negligence or want of care; or (d) an act or omission by any person who is not the Customer or in the Customer's direct employ.
- 7.2 The waiver option will not apply and the Customer will continue in all respects to be fully responsible if the damage is the result of a breach by the Customer of any conditions of the Contract.
- 7.3 The Damage Waiver is not an insurance for Hired Goods and does not cover loss or theft of the Hired Goods.
- 7.4 Damage Waiver will not be effective unless and until any credit account with the Supplier has been paid in full at the time the Customer claims Damage Waiver.

8 Breakdown

- 8.1 Allowance will be made in relation to the Hire Charges to the Customer for any non use of the Hired Goods due to breakdown caused by the development of an inherent fault and/or fair wear and tear on condition that the Customer informs the Supplier as soon as practicable of the breakdown.
- 8.2 The Customer shall be responsible for all expenses, loss (including loss of Hire Charges) and/or damage suffered by the Supplier arising from any breakdown of the Hired Goods due to the Customer's negligence, breach of Contract, misdirection and/or misuse of the Hired Goods.
- 8.3 The Supplier shall at its own cost carry out all routine maintenance and repairs to the Hired Goods during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Hired Goods. The Customer will be responsible for the cost of all repairs necessary to Hired Goods during the Hire Period which arise otherwise than as a

result of fair wear and tear, an inherent fault and/or the negligence of the Supplier while carrying out routine maintenance and/or repairs.

- 8.4 The Customer must not repair or attempt to repair the Hired Goods unless authorised to do so in writing by the Supplier.

9 Delays, loss or damage

- 9.1 If the Hired Goods are returned in a damaged, unclean and/or defective state except where due to fair wear and tear and/or an inherent fault in the Hired Goods the Customer shall be liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Hired Goods to a condition fit for re-hire and to pay the Hire Charges, in accordance with the provisions of clause 9.3, until such repairs and/or cleaning have been completed.
- 9.2 The Customer will pay to the Supplier the replacement cost of any Hired Goods which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to the Supplier under any policy of insurance taken out in accordance with the Contract.
- 9.3 The Customer shall pay the Hire Charges for the Hired Goods up to and including the date it notifies the Supplier that the Hired Goods have been lost, stolen and/or damaged beyond economic repair. From that date until the Supplier has replaced such Hired Goods the Customer shall pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages being equal to two thirds of the Hire Charges that would have applied for such Hired Goods for that period. The Supplier shall use its reasonable commercial endeavours to purchase replacements for such Hired Goods as quickly as possible using the monies paid under clause 9.2 above.
- 9.4 If, in breach of the Contract, the Customer delays returning the Hired Goods to the Supplier after the expiry of the Hire Period, then the Hire Charge shall continue to apply until the Hired Goods are returned to the Supplier.

10 Termination

- 10.1 If the Hire Period has a fixed duration, subject to the provisions of clause 6 of Section 1 (General), neither the Customer nor the Supplier shall be entitled to terminate the Contract before the expiry of that fixed period unless agreed in writing with the other party.
- 10.2 If the Hire Period does not have a fixed duration either the Customer or the Supplier is entitled to terminate the Contract upon giving to the other party any period of notice as may be agreed in writing, save that either party may terminate the hire by giving the other party 7 days notice.
- 10.3 If no period of notice has been agreed or specified the Customer may terminate the Hire Period by the physical return of the Hired Goods to the Supplier.

Section 3: (Online shop)

1 Introduction

- 1.1 The Terms and Conditions of this Section 3 (Online shop) apply when Goods are hired or purchased through the Supplier's website.
- 1.2 This Section 3 (Online shop) is in addition to, and does not replace, the other Sections of the Terms and Conditions.
- 1.3 As an exception, those clauses and sub clauses marked with (*) do not apply to consumers.

- 1.4 This Section 3 (Online shop) should be read in conjunction with the Supplier's guide for buying Goods online (which also includes information about payment and returns):

<http://www.brandontoolhire.co.uk/en/content/46-payment-delivery-and-returns>

2 **Service availability**

- 2.1 The Supplier does not accept orders from Customers based outside the UK.

3 **The Customer's status**

- 3.1 By placing an order through the Supplier's website, the Customer warrants that it is legally capable of entering into binding contracts and that the Customer is at least 18 years old.

4 **How the contract is formed**

- 4.1 After placing an order, the Customer will receive an e-mail from the Supplier acknowledging that the Supplier has received the Customer's order. Please note that this does not mean that the order has been accepted. The Customer's order constitutes an offer to the Supplier to buy/hire the Supplier's Goods (as the case may be). All orders are subject to acceptance by the Supplier, and the Supplier will, if it accepts the order, confirm such acceptance by sending the Customer an e-mail that confirms that the Goods are ready for collection from the collection outlet specified by the Customer when ordering the Goods (Order Confirmation). The Contract between the Supplier and the Customer will only be formed when the Supplier sends the Customer the Order Confirmation.

- 4.2 The Contract will relate only to those Goods whose dispatch the Supplier has confirmed in the Order Confirmation. The Supplier will not be obliged to supply any other Goods which may have been part of the Customer's order until the dispatch of such Goods has been confirmed in a separate Order Confirmation.

- 4.3 The Customer must collect the Goods within seven days of the date the Supplier sent the Customer the Order Confirmation. If the Customer does not do this then the Supplier may cancel the Customer's order.

5 **Our status**

- 5.1 The Supplier may also provide links on the Supplier's website to the websites of other companies, whether affiliated with the Supplier or not. The Supplier does not give any undertaking or warranty regarding products or services the Customer purchases from third party sellers through the Supplier's site, or from companies to whose website the Supplier have provided a link on the Supplier's site.

6 **Consumer rights and returns**

- 6.1 If the Customer is contracting as a consumer, the Customer may have a right to cancel a Contract within the seven working days cooling off period. In this case, the Customer will receive a full refund of the price paid, less any collection charges - in accordance with the Supplier's refunds policy (set out in the Supplier's Payment, Delivery and Returns policy).
- 6.2 To cancel a Contract under clause 6.1, the Customer must inform the Supplier in writing. Once the Customer has informed the Supplier, the Customer must return the Goods to The Supplier as soon as reasonably practicable, and at the Customer's cost. The Customer has a legal obligation to take reasonable care of the Goods while they are in the Customer's possession. If the Customer fails to comply with this obligation, the Supplier may have a right of action against the Customer for compensation.

6.3 All returns must be returned to the branch they were collected from. Please see the Supplier's Payment, Delivery and Returns policy for more information.

7 The Supplier's refunds policy

7.1 If the Customer returns any Goods to the Supplier:

7.1.1 because the Customer has cancelled the Contract within the cooling-off period (see clause 6.1 above), the Supplier will process the refund due to the Customer as soon as possible and, in any case, within 30 days of the day on which the Customer gave the Supplier notice of cancellation. In this case, the Supplier will refund the price of the Goods in full. However, the Customer will be responsible for the cost of returning the item to the Supplier, and if it fails to do so, and the Supplier has to collect it from the Customer, the Supplier will deduct the direct costs of doing so from the Customer's refund.

7.1.2 for any other reason (for instance, because the Goods are defective), the Supplier will examine the returned Goods and will notify the Customer of any refund via e-mail within a reasonable period of time. The Supplier shall usually process the refund due to the Customer as soon as possible and, in any case within 30 days of the day the Supplier confirmed to the Customer via e-mail that the Customer was entitled to a refund. The Supplier will refund the price of defective Goods in full, and any applicable delivery charges and any reasonable costs the Customer incurs in returning the item to the Supplier.

7.2 The Supplier will usually refund any money received the Customer using the same method originally used by the Customer to pay for the purchase.

7.3 More information about returns and refunds is set out in the Supplier's Payment, Delivery and Returns Policy.

8 The Customer's username and password

8.1 The Customer must at all times keep its password and customer username confidential and the Customer must notify the Supplier immediately of any unauthorised use of the Customer's username or password, or of any breach of security known to the Customer. At the Supplier's request, the Customer shall change its username and/or password for security reasons at any time.

8.2 The Customer must notify the Supplier immediately if any employee who has been provided with an individual customer username and password ceases to be employed by the Customer in order that the Supplier can disable the account.

8.3 The Customer is responsible for all activities which occur under the Customer's username and password, or under the Customer's employee's Customer username and password, save where such activities occur as a result of the Supplier's negligence or fault.

9 Price and payment

9.1 The Supplier's site contains a large number of Goods and it is always possible that, despite the Supplier's best efforts, some of the Goods listed on the Supplier's site may be incorrectly priced. The Supplier will normally verify prices as part of the Supplier's dispatch procedures so that, where the correct price is less than the Supplier's stated price, the Supplier will charge the lower amount when dispatching the Goods to the Customer. If the correct price is higher than the price stated on the Supplier's website, the Supplier will normally, at the Supplier's discretion, either contact the Customer for instructions before dispatching the

Goods, or reject the Customer's order and notify the Customer that the Supplier are rejecting it.

- 9.2 If the pricing error is obvious and unmistakable and could have reasonably recognised by the Customer as an error, the Supplier does not have to provide the Goods to the Customer at the incorrect (lower) price.
- 9.3 Payment for all Goods must be made using the WorldPay payment gateway. The Supplier accepts payment with all major credit cards.
- 9.4 For the avoidance of doubt, no credit facility is available in respect of orders through the Supplier's site (even if the Supplier has previously agreed with the Customer a credit facility in respect of Goods ordered or hired otherwise than through the Supplier's site).

10 **Written communications**

- 10.1 Applicable laws require that some of the information or communications the Supplier sends to the Customer should be in writing. When using the Supplier's site, the Customer accepts that communication with the Supplier will be mainly electronic. The Supplier will contact the Customer by e-mail or provide the Customer with information by posting notices on the Supplier's website. For contractual purposes, the Customer agrees to this electronic means of communication and the Customer acknowledges that all contracts, notices, information and other communications that the Supplier provides to the Customer electronically comply with any legal requirement that such communications be in writing. This condition does not affect the Customer's statutory rights.

Section 4: (Consumers)

1 Introduction

- 1.1 The Terms and Conditions of this Section 4 (Consumers) apply in addition to the above where the Customer is a consumer.
- 1.2 This Section 4 (Consumers) is in addition to, and does not replace, the other Sections set out above.
- 1.3 As an exception, those clauses and sub-clauses above marked with (*) do not apply to consumers.

2 Consumer credit

- 2.1 Where hire of the Hired Goods is to a Customer who is an individual and the hire would be covered by the Consumer Credit Act 1974 the duration of the Hire Period shall not exceed 3 months, after which time the Contract shall be deemed to have automatically terminated. Accordingly the hire of any Hired Goods is not covered by the Consumer Credit Act 1974.
- 2.2 Irrespective of clause 2.2, if the Hire Period is extended to a period of time which exceeds three months, the Supplier will automatically terminate the Contract at the end of three months and reissue a new Contract on the same terms to the Customer for the extended period. No Hire Period shall ever exceed a three month period.

3 Payment and interest

- 3.1 If the Customer is contracting as a consumer then the Supplier may charge interest of any sums not paid by the due date for payment at a rate of 2.5% per annum above the base rate of the Bank of England (both before and after judgment/decreed).

4 **Limitation of liability**

- 4.1 The provisions of this clause 4, and the other Terms and Conditions of the Contract, are subject to clause 4.12.
- 4.2 Nothing in the Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a consumer. Where the Customer is acting as a consumer any provision which is marked with an (*) may, subject to determination by the Courts, have no force or effect. For further information about the Customer's statutory rights contact the local authority Trading Standards Department or Citizens Advice Bureau or if based in the Republic of Ireland the Customer's local office of the Director of Consumer Affairs or Citizens Information Centre.
- 4.3 Subject to Section 1 (General) clause 2, and clause 4.2 above, the Supplier does not provide any warranties or representations concerning the Goods or the Services and all warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.
- 4.4 If the Customer discovers a fault with any Goods then it must immediately stop using those Goods and inform the Supplier.
- 4.5 The Supplier shall have no liability to the Customer where that liability is covered by an insurance policy from which the Customer benefits.
- 4.6 The Customer must ensure that any insurance policy from which it benefits, waives any and all rights of subrogation which the insurer may have against the Supplier.
- 4.7 The Supplier will not be liable if the Customer makes a fault worse by continuing to use Goods after the Customer has discovered the fault.
- 4.8 The Supplier has no liability for additional damage, loss, liability, claims, costs, of expenses, caused, or contributed to, by the Customer's continued use of defective Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 4.9 The Supplier has no liability to the Customer for any delay and/or non performance of a Contract to the extent that such delay or non-performance is due to a Force Majeure event. "Force Majeure event" is defined in Section 1 (General) but in summary means an event beyond the Supplier's control. If the Supplier is affected by a Force Majeure Event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 4.10 The Supplier has no liability for anything of which the Supplier was not aware or which could not have reasonably foreseen.
- 4.11 The Supplier has no liability for any delay resulting from the Supplier's breach of the Contract. For example, if the Supplier would not have any liability resulting from any delay if the Supplier supplied the wrong Goods.
- 4.12 Regardless of anything else in the Contract, nothing in the Contract restricts the Supplier's Liability for (a) death or personal injury resulting from negligence for which it is responsible; (b) fraud; (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979; (d) defective products under the Consumer Protection Act 1987 (to the extent that this liability cannot be excluded); or (e) any other matter to the extent that it cannot be excluded or limited by law.