

## Terms and Conditions

### **GENERAL CONDITIONS OF HIRE**

#### 1. DEFINITIONS

In these Terms of Hire the following meanings shall apply :

“Despatch” means the transfer of possession of Equipment to you whether collected by you or delivered by us and despatched shall be interpreted accordingly.

“Dry Hire” means the hire of Equipment only where the installation and commissioning is completed by the hirer

“Equipment” means the hired items referred to in the contract and/or services to be supplied by Us.

“Hire Charges” means the charges payable for the Equipment whilst on hire to You.

“Hire Period” means the time from the date agreed for the start of the hire or Despatch (whichever is the earlier) until the Equipment is returned.

“Return” means the re-transfer of possession of the Equipment to us in a Satisfactory Condition whether delivered by you to us or collected by us and returned shall be interpreted accordingly.

“Satisfactory Condition” means clean undamaged and unaltered as determined in our sole discretion.

“ We” and “Us” means Cross Rental Ltd. and “Our” shall be interpreted accordingly.

“Working Day” means any day on which we are open for business.

“You” means the person, their employees, agents, company, corporation, public authority or body seeking to hire Equipment from Us and “Your” shall be interpreted accordingly.

#### 2. SAFETY AND INSTRUCTIONS

It is Your responsibility to make sure that all people who use the Equipment are properly instructed in its safe and correct use and they are in possession of the instructions supplied by Us. If in the unlikely event that Our Equipment is involved in an accident resulting in injury or death to persons, or damage to property, You shall notify Us immediately by telephone and confirm this notification in writing

#### 3. THE CONTRACT

These conditions exclude any terms and conditions You may have put forward, prior to or after the date of this contract, except where We have agreed to any amendments or other conditions in

writing. These conditions do not affect the statutory rights of a person dealing as a consumer as defined by the Unfair Contract Terms Act 1977 or any statutory amendment of that Act

a) All orders are accepted by Us only under these Terms which may not be altered except with Our written agreement. Any contrary or additional terms unless so agreed are excluded. Written quotations are open for 31 days.

b) Orders may be cancelled only with Our written agreement and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation.

#### 4. MAXIMUM PERIOD OF HIRE (If you are not incorporated)

If You are an individual or partnership, or an unincorporated body of persons, the contract including any amendment or variation to it will end within 89 days from the start of the Hire Period. The Equipment must be returned to Us by the close of business the Working Day before the expiry of the 89 day period. If You fail to do this We will be entitled to charge for any financial loss this causes Us.

#### 5. HIRE CHARGES & HIRE PERIOD

a) Hire Charges are payable during the Hire Period.

b) The Hire Charges as stated or quoted are exclusive of VAT and are subject to change on 28 days written notice both before or during the Hire Period. Any discounts deductions or rebates agreed are only available if the Hire Charges are paid by the due date.

c) Hire Charges stated or quoted are applicable to the quantity, specification, delivery dates, length of hire and information provided by You. If the order placed varies or delay is caused by Your instructions or lack of instructions We shall be entitled to adjust the Hire Charges. Additional charges will be made for the supply and fixing of accessories, extras or additions.

d) Hire Charges stated at weekly rates accrue daily (including the day of Despatch and Return, Bank and Public Holidays) each day or part day accruing at 1/7th of the weekly charge. No allowance is given if the Equipment is not used even if this is outside Your control.

e) Minimum Hire Periods apply as stated or quoted and no refund or credit is given if the hire terminates early for whatever reason.

f) If a minimum Hire Period discount is provided at the start of the contract for the agreed minimum Hire Period then should the hire continue past the minimum Hire Period the same discount applies for the entire length of that contract until terminated.

g) It is Your responsibility to off-hire the equipment when You have finished using it. We will continue to charge daily Hire Charges until You contact Us to obtain an Off-Hire confirmation number.

h) If You cancel the hire order within 24 hours before Despatch, We will be entitled to levy a fee equivalent to 1 weeks Hire Charges plus aborted delivery cost.

#### 6. PURCHASE OF HIRE EQUIPMENT

If You subsequently purchase the Equipment no credit will be given for Hire Charges, including minimum Hire Charges, which have already accrued and further Hire Charges shall continue to accrue until You have paid to Us the agreed purchase price.

## 7. PAYMENT

a) The amount of any deposit, Hire Charges shall be as quoted to You or otherwise as shown in Our current price list from time to time. Where a deposit is required for the Equipment it must be paid in advance of You hiring the Equipment. We may also require an initial payment on account of the Hire Charges in advance of you hiring the Equipment.

b) We may submit an initial invoice for Hire Charges at the commencement of the Hire Period and then issue subsequent weekly/monthly invoices throughout the duration of the Hire Period. A final invoice will be submitted at the end of the Hire Period.

c) Where a credit account has been allocated to You, payment of Our invoices shall fall due 30 days after the date of the invoice. If You have not been allocated a credit account, We will require payment of the Hire Charges prior to the commencement of the Hire Period.

d) You shall pay the Hire Charges payable under the contract to Us at the time and in the manner agreed. Our prices are, unless otherwise stated, exclusive of any applicable VAT for which You shall additionally be liable.

e) Payment by You on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until We have received either cash or cleared funds in respect of the full amount outstanding and time shall be of the essence in respect of payment.

f) If You have any dispute relating to Our invoice, this must be raised in writing to Us within 14 days of the invoice date after such time You will be deemed to have accepted the invoice. If You fail to make any payment in full on the due date, We may charge You interest (both before and after judgment/decreed) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 as amended (where applicable) or at the rate of 6% above the base rate from time to time of HSBC Bank Plc whichever is higher.

g) You shall pay all sums due to Us under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

h) We may set a reasonable credit limit for You. We reserve the right to terminate or suspend the contract for hire of the Equipment if allowing it to continue would result in You exceeding Your credit limit or if the credit limit is already exceeded.

## 8. RISK OWNERSHIP AND INSURANCE

a) Risk in the Equipment will pass immediately to You when they leave Our physical possession or control.

b) Risk in the Equipment will not pass back to Us from You until the Equipment is back in the our physical possession. This shall apply even if We have agreed to cease charging Hire Charges.

c) Ownership of the Equipment remains at all times with Us. You have no right, title or interest in the Equipment except that they are hired to You.

d) You must not deal with the ownership or any interest in the Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending. However You may re-hire the Equipment to a third party with Our prior written consent.

e) You accept full liability and shall fully indemnify Us against all third party claims and losses however arising in respect to damage to or loss or destruction of any property or in respect of the personal injury or death of anybody in any way caused by or relating to the Equipment or its use, except when the damage loss or destruction injury or death directly results from Our negligence or that of Our employees or agents.

f) You shall throughout the Hire Period including notice period, at Your expense, fully insure with a reputable insurance office in the joint names of You and Us the Equipment for the full replacement value against loss or damage or destruction however arising and Our liability under clause 8e above. You shall produce the policy or policies under this condition for inspection on demand. The proceeds of any such insurance that relate directly to the Equipment shall be held by You in trust for Us and be paid to Us on demand. You must not compromise any claim in respect of the Equipment and/or any associated insurance without Our written consent.

## 9. DESPATCH OF EQUIPMENT

a) Hire Charges do not include carriage.

b) You will pay to Us any agreed charges for delivering and collecting Equipment. Despatch dates and/or times are given by Us in good faith but are estimates only. We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay by Us in Despatch and/or return of the Equipment or failure to deliver the Equipment in a reasonable time whether such delay or failure is caused by Our negligence or otherwise howsoever.

c) You shall be responsible for off-loading and loading of the Equipment at Your site. When an operator providing the loading or off-loading services is provided by Us, such person shall be under the direction and control of You and shall for all purposes be regarded as Your servant or agent.

d) You will pay for any further time or attendance including any attempt by Us to carry out Your pre-arranged instructions for delivery or collection which is unsuccessful due to Your acts or omissions.

## 10. INSPECTION

a) At the time of Despatch You shall inspect the Equipment and unless You advise Us by telephone immediately and written notice is received by Us within 3 Working Days of Despatch of any claim for short delivery or failure to conform with the contract apparent on inspection the Equipment will be deemed to have been Despatched in accordance with the delivery documents.

b) Our liability for short delivery or failure of the Equipment to conform to the contract which is apparent on inspection is limited to supplying the Equipment as ordered. We shall not be liable for any damages whatsoever for short delivery or failure of the Equipment to conform to the contract

which is apparent on inspection howsoever caused. You remain liable to pay the full Hire Charges for Equipment Despatched or available for Despatch in accordance with the contract.

#### 11. RETURN OF EQUIPMENT

- a) Hire Charges continue and the Equipment remains Your responsibility until the Equipment is Returned to Us.
- b) We require a minimum of 1 (2 in the week before Easter and Christmas Bank Holidays) Working Days notice of return of Equipment and You will be provided with an off hire number and costs will be suspended until return of the goods
- c) If the Equipment is to be collected by Us and is in a Satisfactory Condition when We attend to collect it Hire Charges will cease on expiry of the notice given by you under Clause 11 b.
- d) We will count the Equipment on its return to verify quantity and issue a off hire confirmed note . You may attend this count. Unless We receive written notice of any dispute within 3 Working Days of Your receipt of the off hire returned note the Equipment will be deemed returned to Us in the quantities shown. The count is not an inspection of the condition of the Equipment. Equipment remains Your responsibility until actual collection occurs.
- e) Equipment such as boilers and chillers must be returned in the same manner in which they were delivered; under no circumstances can any form of Equipment including hose and fittings be stored inside the units.

#### 12. HIRER'S RESPONSIBILITIES

- a) During the Hire Period You will not without Our written consent remove the Equipment from the site to which it was delivered or sublet or part with possession of any of the Equipment.
- b) During the Hire Period You will not repair alter or modify the Equipment or interfere with Our identification marks on the Equipment or any of Our signage attached to the Equipment
- c) During the Hire Period you are responsible for operating the Equipment in strict accordance with the operating instructions. Any damage arising from failing to adhere to operating instructions will be Your sole responsibility.

#### 13. DAMAGE WAIVER

- a) All hire contracts are subject to a damage waiver of 10.0% of the total weekly Hire Charges shown on the contract.
- b) If You have paid the repairable damage waiver or have agreed in Our order form to pay the repairable damage waiver and provided that it is not otherwise in breach of this agreement, You will not be liable to Us for repairable damage up to a value of £2500, but will continue to be liable for

and to indemnify Us in respect of all irreparable damage and lost Equipment as set out in clause 14 and 15 below.

c) The damage waiver only covers damage and cleaning of the Equipment and does not include Equipment that is lost or stolen, or damaged beyond economic repair due to Your negligence.

d) All Equipment hired by You must be covered on Your insurance against damage and theft as per clause 8f.

#### 14. REPAIR AND MAINTENANCE

a) Allowance will be made in relation to the Hire Charges for any non-use of the Equipment due to breakdown caused by the development of an inherent fault and/or fair wear and tear on condition that You inform Us as soon as practicable of the breakdown.

b) A callout charge of a minimum of £50 (fifty pounds) will be levied in the event of any request for repair resulting from operator error or failure to adhere to operating instructions by You.

c) You shall be responsible for all expenses, loss (including loss of rental) and/or damage suffered by Us arising from any breakdown of the Equipment due to Your negligence, misdirection and/or misuse of the Equipment.

d) We will at Our own cost carry out all routine maintenance and repairs to the Equipment during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Equipment. You will be responsible for the cost of all repairs necessary to Equipment during the Hire Period which arise otherwise than as a result of fair wear and tear, an inherent fault and/or Our negligence while carrying out routine maintenance and/or repairs. You will at all times allow Our engineer or representative access to site to inspect maintain or repair the Equipment.

e) You must not repair or attempt to repair the Equipment unless authorised to do so in writing by Us.

#### 15. NON RETURNED, LOST STOLEN OR DAMAGED EQUIPMENT

a) You have full responsibility for the care and safekeeping and return in good order of the Equipment.

b) You will pay to Us the current published list price of any Equipment which is lost or stolen or damaged beyond economic repair. You are advised to insure the Equipment on this basis as per Clause 8f above. You must not compromise any insurance claim without Our written consent.

c) If the Equipment is not returned in a Satisfactory Condition, and You have not paid the damage waiver (Clause 9), You will pay Us the cost of cleaning repairing and/or. If the Equipment is lost, stolen or in Our sole opinion is damaged beyond repair, You shall pay us Our current published list price of the Equipment. We shall give you 7 Working Days written notice before starting any repairs to allow for Your inspection. The decision to undertake repairs is at Our sole discretion. This is without prejudice to Our other rights.

d) You shall pay to Us 70% of the Hire Charges, from the date of the off-hire, or damage or loss notification, until You or Your insurers have paid for the full replacement cost or the cost of repairing the Equipment to the full hireable condition.

## 16. LIABILITIES

a) 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.

b) Any defective Equipment must be returned to Us for inspection if requested by Us before We will have any liability for defective Equipment.

c) We shall have no liability to You if, without just cause, any Hire Charges have not been paid in full by the due date for payment.

d) We shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by Your continued use of defective Equipment after a defect has become apparent or suspected or should reasonably have become apparent.

e) You shall give Us a reasonable opportunity to remedy any matter for which We are liable before You incur any costs and/or expenses in remedying the matter itself. If You do not do so We shall have no liability to You.

f) We shall have no Liability to You to the extent that You are covered by any policy of insurance arranged as a result of the contract and You shall ensure that Your insurers waive any and all rights of subrogation they may have against Us.

g) We shall have no liability to You for any

g.i) consequential losses (including loss of profits and/or damage to goodwill)

g.ii) economic and/or other similar losses

g.iii) special damages and indirect losses

g.iv) business interruption, loss of business, contracts and/or opportunity.

h) Our total liability to You under and/or arising in relation to any hire shall not exceed 3 times the amount of the Hire Charges under hire or the sum of £1,000/€1250 whichever is the higher. To the extent that any liability would be met by any insurance then the Our liability shall be extended to the extent that such liability is met by such insurance.

i) Each of the limitations and/or exclusions in these terms and conditions shall be deemed to be repeated and apply as a separate provision for each of

i.i) Liability for breach of contract

i.ii) Liability in tort/delict (including negligence)

i.iii) Liability for breach of statutory and/or common law duty; except clause h) above which shall apply once only in respect of all the said types of liability.

j) Nothing in these terms and conditions shall exclude or limit the Our liability for death or personal injury due to Our negligence nor exclude or limit any other type of liability which it is not permitted to exclude or limit as a matter of law.

## 17. NON-PAYMENT/INSOLVENCY

a) For the purposes of this clause the following definitions shall apply:

a.i) Insolvent means You ceasing to pay your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business.

a.ii) Associated Company means Your subsidiary or holding company as defined in section 256 of the Companies Act 2006 or a subsidiary of such holding company, or any company over which Your directors or shareholders have control as defined in section 191 of the Income Tax Act 2007.

b) If You fail to pay any invoice or any sum due to Us under any contract on the due date or Your credit limit is exceeded or You or Your Associated Company becomes Insolvent or there is a material change in Your or Your Associated Company's constitution or You commit a material breach of this contract and fail to remedy that breach after being requested to do so, all sums outstanding between You and Us under this and any other contract shall become immediately due and payable.

We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have)

(i) charge interest on the monies outstanding at the rate of 6 per cent above HSBC Plc's base rate, published daily and in force from the due date until the date of payment after as well as before judgement

(ii) withdraw Your right to quiet possession of the Equipment and any implied licence and authority You may have to use the Equipment

(iii) cancel or suspend any further Despatches to You under any contract without liability on Our part

(iv) terminate this or any other contract with You without liability on Our part.

(v) recover all or any of the Equipment and for that purpose We may with such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Equipment may be or is believed to be situated.

d) You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under this contract including but not limited to recovery of any sums due.

## 18. COUNTERCLAIMS AND SET OFF

Under no circumstances shall monies owed by Us to You under this or any other contract be set-off against monies properly owed to Us under this contract.

## 19. STATUTORY COMPLIANCE



You warrant and represent to Us that you will obtain every necessary licence or permit required, and/or comply with any legal requirement for or relating to the use or installation of the Equipment.

## 20. FORCE MAJEURE

We will not be liable for any failure in the performance of any of Our obligations under the contract caused by factors outside Our control.

## 21. DISPUTES

a) Should any dispute arise under the contract at any time then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in court.

b) If any such dispute or difference shall arise then one party may serve upon the other a notice in writing which states the nature of the dispute, the remedy sought and a request to refer the dispute to adjudication.

c) The notice under b above shall also be served on the adjudicator either on his identity being agreed or him being appointed as the case may be.

d) The parties shall within 4 days of the notice being served agree on a suitable Adjudicator. In the event of failure by the parties to agree on an Adjudicator, either party may apply to the Academy of Construction Adjudicators whose written notification of an appointment shall be served and binding on both parties.

## 22. DRY HIRE

We will Dry Hire products if You are a trade customer or client with relevant skills required to install the Equipment. Terms and Conditions applicable to Dry Hire contracts are as follows:

a) You take full responsibility for the safe handling, installation and commissioning of the Equipment on Dry Hire.

b) If You are responsible for transportation of the Equipment on Dry Hire, the Equipment must be transported safely using appropriate lifting and transportation methods. Special requirements will be needed for larger Equipment; mobile boilers i.e. those built on two wheeled road axles must be transported using either appropriately sized towing vehicle or by using a suitable vehicle transporter. Lifting gear must be used for all Equipment in such a way that no damage is caused to the Equipment. Failure to comply with recommended methods that create or cause damage to Equipment will be charged to You. Charges will be based on inspection and full cost of Equipment repair.

c) You must provide proof that the Equipment is to be installed and commissioned by fully trained and proficient operators prior to installation.

d) Installation of Equipment containing 3kg or more of refrigerant gas must be performed by an engineer with certification to current F gas regulations.

e) In the case of natural gas installations proof of up to date and current gas safe certification must be provided. A commissioning sheet and flue analysis report must also be provided for Our records.

f) If We are called to attend a site in order to repair or to complete failed commissioning of Equipment taken on a Dry Hire basis, You agree to pay Us for all costs (at the current prevailing published rates) associated with the call out. In the event that the Equipment is found to be faulty, and where the fault has not been created by incorrect installation or commissioning We will repair or replace the Equipment at Our own cost.

g) On completion of the Dry Hire all Equipment must be returned in line with the agreed time scales. Equipment will be inspected, any damage will be invoiced to You in line with standard terms and conditions.

### 23. APPLICABLE LAW

The contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in matters regarding the contract except to the extent that We invoke the jurisdiction of the courts of any other country.

## **SALE OF GOODS AND SUPPLY OF SERVICES**

### 1 EXISTENCE AND SCOPE OF CONTRACT

- a) These terms and conditions together with Our Quotation set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms or conditions are implied by statute.
- b) Unless otherwise expressly agreed, collection or acceptance of Goods or acceptance of Services by You shall signify acceptance of these terms and conditions. For the avoidance of doubt We do not intend to enter into a Contract on any terms and conditions other than those set out herein.
- c) If the Contract includes any installation work or other Services, it is agreed between the parties that all the Contract Works shall be construction operations for the purposes of The Housing Grants, Construction and Regeneration Act 1996, Part II, which Act shall apply to contract.
- d) All quotations by Us shall be open for acceptance for 30 days unless expressly stated otherwise or unless withdrawn or revised by Us.
- e) All quotations for the sale of Goods are conditional on availability of the said Goods to Us..

### 2 DEFINITIONS

The following terms shall have the following meanings:

‘CDM Regulations’ means the Construction (Design and Management) Regulations 1994.

‘Contract’ means the contract formed between the parties on these terms and conditions.

‘Contract Price’ means the sum stated in Our quotation as the price payable to Us for performance of the Contract Works.

‘Contract Works’ means Goods and Services where both are provided under the Contract.

‘Defect’ and ‘Defective’ means Goods or Services supplied not in accordance with the Contract. For the avoidance of doubt ‘Defect’ and ‘Defective’ does not include deterioration resulting from fair or excessive use, damage however caused, improper use, lack of proper maintenance by the Customer or others for whom it is responsible.

‘Goods’ means the Goods supplied by Us as described in our Quotation.

‘Quotation’ means the quotation for the Goods and/or Services prepared by Us and provided to You.

‘Services’ means the Services provided by Us as described in our Quotation.

‘Site’ means the area within which the Goods are to be installed together with any other area which We shall be permitted to use in connection with the Contract Works.

‘Us, We or Our’ means Cross Rental Ltd its successors and assigns.

‘Variation’ means any change or addition to, or omission from the specification of any Goods or Services, or any change in the manner or time in which such Goods or services are to be carried out.

‘You’ means the customer of Us to whom this document is addressed and includes successors or others for whom You are responsible.

### 3 SALE OF GOODS - DELIVERY AND ACCEPTANCE

a) This Clause 3 shall apply in all cases where the Contract is for the supply of Goods and no installation Services at the Site are provided by Us under the Contract notwithstanding other Services may be provided by Us in connection with the Goods.

#### Delivery

b) The Goods are delivered to You when We make them available to You or Your agent or any carrier (who shall be Your agent whoever pays its charges) at Our premises or other place of delivery agreed by Us (“Deliver/Delivered/Delivery”)

c) Risk in the Goods passes when they are Delivered to You.

d) We may at Our discretion Deliver the Goods by instalments in any sequence.

e) When the Goods are Delivered by instalments no default or failure by Us in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously Delivered or which remain undelivered.

f) Any dates quoted by Us for the Delivery of the Goods or if applicable for the provision or completion of the Services are approximate only and shall not form part of the Contract, and You acknowledge that in the performance expected of Us no regard has been paid to any quoted Delivery dates.

g) If You fail to take Delivery of the Goods or any part of them on the due date or to provide any instructions or documents required to enable the Goods to be Delivered on the due date, We may on giving written notice to You store or arrange for the storage of the Goods and on the service of the notice risk in the Goods shall pass to You. Delivery of the Goods shall be deemed to have taken place and You shall pay to Us all costs and expenses including storage and insurance charges arising from its failure.

h) We shall not be liable for any penalty loss injury damage or expense arising from any cause at all, nor shall any such delay or failure entitle You to refuse to accept any Delivery or performance or to repudiate the Contract.

#### Acceptance and Notice of Complaint

i) You shall be deemed to be satisfied with and have accepted the Goods on delivery UNLESS You have complied with the provisions of this Clause 3.

j) Any claim that the Goods or any part of them have been Delivered damaged or are not of the correct quantity or do not comply with their description shall be notified by You to Us by written

endorsement on the delivery note in respect of such Goods and in writing to Us within 48 hours of their Delivery.

k) Any claim that the Goods or any part of them have been lost in transit or are defective or in the case of Services there has been a Defect in workmanship shall be notified by You to Us within 7 days of delivery of the Goods or completion of the Services.

l) Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods or part thereof.

m) We shall be afforded reasonable opportunity and facilities to investigate any claims made under this Clause 3 and You shall if so requested in writing by Us promptly return any of the Goods the subject of any claim and any packing materials securely packed and carriage paid to Us for examination.

n) We shall have no liability with regard to any claim in respect of which You have not complied with the claims procedures in this Clause 3.

o) You agree and accept that any item purchased from Us will be installed by a competent, qualified installer. Failure to adhere to this could invalidate the manufacturer's warranty.

#### 4 SUPPLY OF GOODS AND SERVICES - TIME ACCEPTANCE AND DEFECTS

a) This Clause 4 shall apply in all cases where the Contract is for the supply of Goods and Services including installation Services by Us at the Site.

b) You shall allow Us access to the Site to enable Us to carry out and complete the Contract Works.

c) Any dates quoted by Us for delivery of Goods or completion of any Services are approximate only and shall not form part of the Contract and You acknowledge that in the performance expected of Us no record has been paid to any such dates.

d) We shall not be liable for any penalty loss injury charge or expense arising from Our failure to meet any dates referred to in Clause 4(c), nor shall any such failure entitle You to refuse performance or to repudiate the Contract.

e) When We consider We have substantially completed the supply of Goods and installation Services including testing and initial commissioning where appropriate, We shall notify You that the Contract Works are complete providing that there may be Goods and Services remaining to be supplied or completed including:

(i) Goods and/or Services of a de minimus nature

(ii) manuals instructions information to be provided (if any) in pursuance of Our obligations under the CDM Regulations or otherwise under the Contract.

(iii) completion of testing and/or commissioning which is prevented by circumstances beyond Our control including but not limited to climatic conditions or conditions on the Site.

f) In the event that supply of Goods or Services referred to in Clause 4.(e) (i) to (iii) remains to be completed after the time notified by Us under Clause 4 (e), We shall complete the said supply in a reasonable time having regard to all the circumstances.

g) On receipt of notice by Us under Clause 4(e) You shall forthwith inspect the work on the Site and You shall be deemed to be satisfied with and have accepted the Contract Works save in respect of matters referred to in Clause 4(e) (i) to (iii) notified to You, UNLESS You immediately notify Us of your dissatisfaction in writing giving reasons.

h) In the event that We do not agree with You that the work on Site is not substantially complete within the meaning of Clause 4(e), either party may refer the matter to adjudication under Clause 20(a).

i) The parties agree that on such referral under Clause 4(h) all further work including matters notified by Us as incomplete may be suspended without further notice until the Adjudicator's Decision is received by both parties and notwithstanding the Adjudicator's decision as to his costs, each party will bear its own cost in respect of suspension of the work. The right to suspend the work shall cease 4 days after receipt by Us of the Adjudicator's Decision.

j) If any Defect appears or becomes apparent within 6 months following acceptance of the works under Clause 4(e), You shall immediately notify Us and afford Us reasonable opportunity to inspect, to investigate the cause, and to correct the Defect.

On receipt of notification of a Defect, We shall within a reasonable time inspect the Defect and may at Our discretion investigate and correct the Defect at Our own cost.

## 5. VARIATIONS

a) All variations shall be in writing signed by both parties or shall be requested in writing by You and accepted expressly as a Variation by Us.

b) No Variation shall vitiate the Contract.

c) We may require the basis of charging any Variation to be agreed in writing before any Goods or Service comprising a Variation is provided to You.

d) In the event that the basis of charging a Variation is not agreed as provided in Clause 5(c) We may at our absolute discretion refuse to accept the Variation or may require the subject of the proposed Variation to be supplied under a separate contract.

e) If We accept a Variation without first having agreed the basis of charging, then the Variation shall be valued as the work contained therein proceeds on a fair and reasonable basis having regard to all the relevant circumstances including any prices for similar Goods or Services contained in the Contract.

## 6. INFORMATION PROVIDED BY YOU AND ASSUMPTIONS

### Information Provided You

a) Where in Our quotation any information or document is identified as provided by You, We shall be entitled to rely on such information or document for the purpose of discharging Our obligations under the Contract.

b) If the said information or document contains any error or inconsistency, the correction of which would affect performance of the Contract Works in any way whatsoever and if such correction is

required in writing by You or is necessary for performance of the Contract Works, any resulting effect on the Contract Works shall be carried out by Us and otherwise it shall be treated as though it were a Variation.

Assumptions made by Us

c) Where in Our quotation it is stated that an assumption has been made, the Goods and/or Services specified and the prices therefore included in the Contract are based on such assumption being correct.

d) If at any time any said assumption is found to be incorrect and correction would affect the performance of the Contract Works in any way whatsoever, and if such correction either is requested in writing by You or is necessary for performance of the Contract Works, any resulting effect on the Contract Works shall be carried out by Us and treated as though it were a Variation.

## 7. PRICES

a) The Contract Price is based on prices and rates, terms and duties applying at the time of the Quotation.

b) If after the date of the Quotation Our costs are increased by any increase in the prices or rates to Us of materials, plant, equipment, transport, labour and any part of Our overhead costs, or if there is any imposition of a tax or duty, or any increase in the rate of any existing tax or duty, We shall be entitled to be reimbursed by You the amount of its said increased costs.

c) The Contract Price and all prices contained in the Quotation are nett and no provision is made for You to be allowed discount.

## 8 PAYMENT AND SET OFF

Payment (Supply only) 8.1 If the Contract does not include installation of the Goods by Us at the Site:

a) We may invoice for Goods supplied immediately after Delivery. If the contract provides for Delivery in instalments, We may invoice for the relevant Goods immediately after Delivery of each instalment.

b) All invoices for the price of the Goods and Services are payable without discount of any kind in pounds sterling within 30 days of date of invoice at Our premises stated on the invoice and in no circumstances shall You be entitled to make any deduction or withhold payment for any reason at all.

Payment (Supply and Installation) 8.2 If the Contract includes installation of the Goods by Us at the Site payment shall be made in the following manner:

a) We may submit our invoice for Goods supplied and/or Services provided and/or Variations provided under the Contract or for any other amounts due from You to Us under the Contract, at one month intervals throughout and at the end of and commencing after the start of any contract period.

b) Payment of the proper amount payable shall be made within a period of 30 days of date of Our invoice.

c) Not later than 14 days after the receipt of Our invoice You shall notify Us in writing giving details of the amount to be paid against the said invoice and the basis on which it is calculated.

d) If in respect of any invoice submitted by Us to You, You intend to withhold payment (or part thereof) of a sum previously notified as due under Clause 8.2(c), You shall give written notice of such intention not later than 7 days before the latest date for payment under Clause 8.2(b), giving details of each amount to be withheld and the grounds for withholding each amount.

8.3 Should You default in making full payment in accordance with the foregoing provisions whether by non-payment or where applicable by failing to serve an effective notice to withhold payment under Clause 8.2 without prejudice to any other right or remedy under the contract:

a) We may charge interest on all outstanding monies at the rate of 6 per cent per annum above the base rate of HSBC Bank plc from time to time prevailing charged on a daily basis compounded monthly until payment.

b) We may suspend performance of Our obligations under the Contract, providing We first give written notice to You stating the grounds on which the suspension is intended and the date on which We intend to suspend performance being not earlier than 7 days after the date of the notice.

c) We may continue suspension of Our performance under sub-clause (b) hereof until 3 days after You make full payment of the amount due.

d) In respect of suspension of Our performance under sub-clauses (b) and (c) We shall be entitled to appropriate relief from any of Our obligation under the Contract connected with time limits for Our performance of the Contract Works.

e) We shall have a lien over all Your property in the possession of Us for all amounts due at any time from You, and We may use sell or dispose of that property as agent for and at the expense of You and apply the proceeds in and towards the payment of such amounts on 14 days notice in writing to You. On accounting to You for any balance remaining after payment of any amounts due to Us and the costs of sale or disposal We shall be discharged of any liability in respect of Your property.

8.4 You will indemnify Us against all direct legal and other costs including but not limited to the cost of Our employees incurred in the recovery of any sum which becomes overdue for payment and any loss and/or expense suffered by Us resulting from action taken in accordance with the provisions contained in Clause 8.3.

#### Counter Claims and Set Off

8.5 Under no circumstances shall monies owed by Us to You under this or any other contract between the parties be set off against monies properly due to Us under this Contract.

#### 9 TITLE



9.1 Notwithstanding the earlier passing of risk, title to and property in the Goods shall pass to You when the amount due under the invoice for the Goods (including interest and costs) has been paid in full, and until such payment You shall hold the Goods in a fiduciary capacity as Our bailee and shall store or mark them so that they can at all times be identified as Our property.

9.2 We may at any time before title passes and without any liability to You repossess and dismantle and use or sell any of the Goods and by doing so terminate Your right to use sell or otherwise deal in them and for the purpose of determining what if any of the Goods are held by You and inspecting them enter any premises of or occupied by You.

9.3 Until title to the Goods passes to You the entire proceeds of sale of the Goods shall be held in trust for Us and shall be held in a separate designated account and not mingled with any other monies or paid into any overdrawn bank account and shall be at all times identifiable as Our money.

9.4 We may maintain an action or the price of the Goods notwithstanding that title in them has not passed to You.

9.5 You grant Us and Our agents an irrevocable licence to enter at any time any vehicles or premises owned or occupied by You or in Your possession for the purpose of repossessing and removing any such Goods the property in which has remained in Us under Clause 9.1 hereof. We shall not be responsible for and You shall indemnify Us against liability in respect of damage caused to such vehicles or premises in such repossession and removal being damage it was not reasonably practicable to avoid.

9.6 You must ensure that if the Goods are or become affixed to any land or building they shall be capable of being identified as the property of Us and removed without material injury to such land or building and to take all necessary steps to prevent title to the Goods from passing to the freehold or leasehold owner of such land or building. You warrant to repair and make good any damage caused by the affixation of the Goods or their removal from any land or building and to indemnify Us against all loss damage or liability We may incur or sustain as a result of such affixation or removal.

9.7 If the Goods are affixed by Us to any land or building in performance of the Contract, Our rights to repossess the Goods and any obligations in respect thereof shall be the same as if the said Goods were affixed by You, save that We shall mark the Goods so affixed as the property of Us in such a manner that such mark shall not damage the Goods and may be removed by You when title to and property in the Goods has passed to You.

9.8 Your right to possession of the Goods shall cease if You do anything or fail to do anything which would entitle an administrator or administrative receiver to take possession of any assets or would entitle any person to present a petition for winding-up.

## 10 EXTENT OF LIABILITY

### Generally

10.1 Unless otherwise provided in these Terms and Conditions under no circumstances shall We have any liability of whatever kind for:

- a) Any fault or imperfection resulting from wear and tear, accident, improper use by You or use by You except in accordance with the instructions of Us or the manufacturer of any of the Goods, or neglect, or from any instructions or materials provided by You.
- b) Any of the Goods which have been adjusted modified or repaired except by Us.
- c) The suitability of any of the Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions was known by or communicated to Us.
- d) Any substitution by Us of any materials or components not forming part of any specification of the Goods agreed in writing by Us.
- e) Any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by Us contained in Our catalogues, sales literature, price lists, or elsewhere since they are merely intended to represent a general impression of the Goods and not to form part of the Contract or be treated as representations.
- f) Any technical information recommendation statements or advice furnished by Us or Our servants or agents not given in writing in response to a specific written request from You before the Contract is made.
- g) Any variations in the quantities or dimensions of any of the Goods or changes of their specifications or substitution of any materials or components if the variation or substitution does not materially affect the characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified.

10.2 Except as expressly provided elsewhere, We shall have no liability to You for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of Us or in any other way out of or in connection with the performance or purported performance of or failure to perform the contract except for death or personal injury resulting from the negligence of Us.

10.3 If You establish that any of the Goods have not been Delivered, have been Delivered damaged, are not of the correct quantity or do not comply with their description, We shall at Our option replace with similar Goods any of the Goods which are missing lost or damaged or do not comply with their description.

10.4 If You establish that any of the Goods are Defective, We shall at Our option replace with similar Goods or repair any Defective Goods or rectify any Defective workmanship or at Your request allow You credit, or to the extent that the Goods are not of Our manufacture assign to You (so far as We are able to do so) any warranties given by the manufacturer of the Goods to Us. Cost of any warranty parts will be borne by U however the labour repair cost is to be borne by You.

10.5 Clause 10.4 shall not apply unless: (a) If so required by Us all Defective Goods are first returned to Our premises carriage paid by You, and (b) The Goods have not been altered in any way whatsoever, nor have they been subjected to misuse or unauthorised repair (c) The Goods have

been properly and correctly stored or installed or connected (unless We carried out such installation and connection) and used by You in accordance with the manufacturer's instructions, and (d) In the case of Goods requiring service or maintenance You have entered into a contract for their maintenance with Us.

10.6 Clause 10.4 shall not apply to plumbing work or repair of faults caused by failure or stoppage in power supply or defects or blockage in drainage systems or defects in water supply or scale formation resulting in pipework blockage unless any of the foregoing was installed by Us.

10.7 The Delivery of any repaired or replacement Goods shall be at Our premises or other delivery point specified for the original Goods.

10.8 No claim against Us shall be entertained for any Defect arising either from any design or specification provided or made by You, or from any adjustments alterations or other work done to the Goods or Services by any person except Us.

10.9 We shall not be liable where any of the Goods the price of which does not include carriage are lost or damaged in transit and all claims by You shall be made against the carrier. Replacements for such loss or damaged Goods will if available be supplied by Us at the prices ruling at the date of despatch and shall be a Variation.

10.10 In no circumstances shall Our liability to You under these terms and conditions exceed the invoice value of the Goods or Services

10.11 Except as expressly provided elsewhere in the Contract We shall not be liable for any claims in respect of economic loss, loss of production, loss of profit, loss of opportunity, loss of bargain or other indirect or consequential injury loss or damage caused directly or indirectly by any breach of the contract or any negligence on Our part or on the part of any of Our employees agents or others for whom we are responsible in connection with or arising out of the supply of the Goods or the Services or the installation repair or maintenance of the Goods or in connection with any statement given or made, or failure to give advice or warning by or on behalf of Us except that such exclusion shall not apply to any implied term as to quality or fitness for any general or particular purpose where You deal as a Consumer as defined in Section 12 of the Unfair Contract Terms Act 1977.

10.12 In the event that the Goods sold are second hand and You are aware that You are purchasing second hand goods, there is no warranty offered and the Goods are "sold as seen".

#### Design

10.13 To the extent that the Contract Works include the provision by Us of design Services, We shall supply such Services using reasonable professional care and skill.

10.14 Unless otherwise provided in the Contract, We do not warrant that the Contract Works as described in the Quotation or its incorporation within the work of others will satisfy Your requirements.

## 11 TERMINATION

11.1 Without prejudice to and in addition to any other right or remedy We possess under the Contract, We may at Our sole discretion terminate the supply of the Goods or the Services if

a) You fail to make any payment when and as due, or otherwise default in any of Your obligations under the Contract or

b) You become Insolvent, have an Administrative Receiver appointed of Your business, or You are compulsorily or voluntarily wound up, or We bona fide believe that any of those events may occur.

11.2 In the case of termination any deposit paid by You to Us shall be forfeited

## 12 HEALTH AND SAFETY

### CDM Regulations

12.1 Except if You deal as a consumer and the Site is a domestic dwelling, We draw Your attention to the provisions of the Construction (Design and Management) Regulations 1994 and any subsequent amendments, and to the associated Approved Code of Practice.

12.2 In particular We draw Your attention to Your duties, if the Contract Works are subject to the CDM Regulations, to appoint specified duty holders to act under the said Regulations and to make a declaration to the Health and Safety Executive in accordance with Regulation 4.

12.3 You shall notify Us if the Contract Works are subject to the CDM Regulations and warrant to Us that if necessary the duty holders required by the said Regulations have been or will be appointed by You.

### Health and Safety Generally

12.4 Your attention is drawn to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974). We will make available to You such information as is appropriate relating to the Goods as is in Our possession to ensure that as far as reasonably practicable they are safe and without risk to health when properly used.

## 13 SERVICES

13.1 This Clause 13 shall apply if the Contract is for supply of Goods and Services including installation Services by Us at the Site.

13.2 We shall be entitled to carry out the Services during normal working hours. If You request Us to perform Services outside normal working hours such request shall be a Variation under Clause 5(a).

13.3 Unless otherwise provided expressly in Our Quotation the Services shall exclude the following :-

- (a) All electrical mains power supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and Our tools plant and equipment.
- (b) Any specialist builders' work of a structural nature including but not limited to drilling of holes through reinforced walls, special support slabs, walls, and cutting and weatherproofing of roofs, painting, redecorating and making good the premises after Our installation work, removal and refixing of interlock design ceiling tiles, and all remedial work necessitated by accidental damage of any of the foregoing or by accidental breakage of glass during the carrying out of the Services.
- (c) All necessary Planning Approvals or other consents required for the performance of the Services.
- (d) Any craneage, hoisting gear, scaffold, ladders and moveable platforms

13.4 Goods delivered to Site which remain unfixed and Goods installed and work carried out in connection therewith shall at all times be at Your sole risk and if any part thereof is lost damaged or destroyed through any cause whatsoever We shall be entitled to treat and charge for the cost of restoration of any Goods or Services so lost damaged or destroyed as a Variation. You shall insure and keep insured in the joint names with such reputable insurers as We shall approve the full value of the Goods and/or the Services, including Our tools plant and equipment on site and the cost of any relevant professional fees or Services against every kind of loss damage or destruction. You shall produce to Us on demand the policy or policies under which such insurance is effected together with the latest premium receipts. If You shall default in effecting insurance We may effect the same on Your behalf and the cost thereof shall be reimbursed by You to Us on demand.

13.5 If the Services are to be performed at Your premises of You or at Your request at the premises of any other person then You warrant and undertake to Us throughout the term of the Contract as follows :-

- (a) That You have full power and authority to enter into the Contract and to permit Us to perform the Services and that all necessary planning approvals or other consents authorising the Services have been obtained.
- (b) To grant to Our employees agents and contractors full and unrestricted safe access to the Site as We shall from time to time require in order to discharge Our obligations under the contract.
- (c) To make available free of charge at the Site such facilities as We shall reasonably require to enable the Services to be performed safely expeditiously and without any interruption by any activity of You including but without limitation adequate and safe working space, storage, office furniture equipment and all electrical mains power water and/or other fuel supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and Our tools plant and equipment, any craneage hoisting and/or lowering gear specialist lifting tackle scaffolding ladders and moveable platforms.
- (d) To provide adequate protection of all the Goods tools plant and equipment and materials on Site.
- (e) To provide prior to commencement of installation and at Your cost all builder's work including but without limitation foundations, drilling of holes through reinforced walls, special support slabs,

cutting and weathering of roofs, cutting away and making good as required and ready availability of all plant and equipment so as to ensure that the premises are in a fit state for the Contract Works.

(f) To take all reasonable precautions to protect the health and safety of Our employees agents and contractors while carrying out the Services.

(g) To allow Our employees agents and contractors reasonable access to Your employees for the purpose of investigation and discussion in connection with the Services and to communicate the identity of the employee who shall act as the contact point and channel of communication with Us in the provision of the Services.

13.6 Without prejudice to any other right or remedy We possess under the Contract, We may claim the amount of any loss and/or expense incurred by Us resulting from any breach by You of Your obligations under Clause 13.1 to 13.5.

#### 14 CONFIDENTIALITY

You shall not at any time whether before or after completion or termination of the Contract divulge or use any unpublished technical information deriving from Us or any other confidential information in relation to Our affairs or business.

#### 15 CANCELLATION BY YOU

15.1 Orders for Goods which have to be made specially for You and/or for which We have placed an order with a manufacturer will be charged in full unless written notice of cancellation is received not less than 8 weeks before the delivery date notified to You, and providing manufacture of such Goods or any components has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time before the Goods are allocated or set aside for the Contract by Us, but if cancellation is received after such Goods or components have been so allocated or set aside by Us then a reasonable packing and handling charge will be payable by You together with a re-stocking charge of 25% of the value of the equipment.

#### 16. RETURNS POLICY – NON FAULTY ITEMS

16.1 Once submitting the order you have entered a contract with us. If you decide that you wish to cancel the order or return the Goods after deciding that they are not suitable, for whatever reason (excluding Defective Goods – see clause 7.) You should phone the office on 08081691919 in the first instance. This policy only covers a 7 day period from Delivery after which time no refund can be claimed. Collection will be arranged and on receipt of the Goods we will arrange a refund less 30% re-stocking charge plus the cost of collection and the original delivery charge.

16.2 To qualify for a refund the Goods must be:

- a. In “unused” condition,
- b. Complete with any accessories including the original box and packaging.

## 17 STATUTORY COMPLIANCE

You warrant and represents to Us that You will obtain every necessary licence or permit or approval required and give every necessary notice or declaration and/or comply with any legal requirement for or relating to the use or installation of the Contract Works.

## 18 FORCE MAJEURE

18.1 We shall not be liable for any failure in performance of any of Our obligations under the contract caused by factors outside Our control.

## 19 NOTICES

19.1 To be served effectively, any notice or communication in writing required to be given pursuant to this Contract shall in the case of a notice or communication to Us be sent to the address stated on Our Quotation and shall in the case of a notice or communication to You be sent to the You at your registered office if You are a company and in any other case to the address of You last known to Us. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was despatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission.

## 20 GENERAL

20.1 We may subcontract the performance of the Contract in whole or in part.

20.2 You shall not assign or sublet the Contract in whole or in part, without first obtaining Our written consent which consent shall not be unreasonably withheld.

20.3 If the Goods are manufactured or supplied or other Services performed in accordance with any design or specification provided or made by You, You shall indemnify Us against and shall compensate Us in full on demand for all claims expenses and liabilities of any nature in connection therewith including any claim whether actual or alleged that the said design or specification infringes the rights of any third party.

20.4 All tools patterns materials drawings specifications and other data provided by Us shall remain Our property, and all technical information patentable or unpatentable copyright and registered design arising out of or in connection with Our performance of the Contract, shall be the property of Us, save to the extent that the Contract Works expressly provides otherwise.

20.5 If any provisions contained in these terms and conditions shall be deemed to be invalid for any reason it shall be read as if the invalid provision had to that extent been deleted therefrom and the validity of the remaining provisions shall be affected thereby.

## 21. DISPUTES

a) Should any dispute arise under the Contract at any time then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in court.

b) If any such dispute of difference shall arise then one party may serve upon the other a notice in writing which states the nature of the dispute, the remedy sought and a request to refer the dispute to adjudication.

c) The notice under b above shall also be served on the adjudicator either on his identity being agreed or him being appointed as the case may be.

d) The parties shall within 4 days of the notice being served agree on a suitable Adjudicator. Any failure by the parties to agree on an Adjudicator, either party may apply to the Academy of Construction Adjudicators whose written notification of an appointment shall be served and binding on both parties.

## 22 LAW

22.1 The contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in matters regarding the contract except to the extent that We invoke the jurisdiction of the courts of any other country.



Heating Dehumidifiers / Dryers Boilers Portable Air Conditioning Fixed Air Conditioning  
Chillers Download our heating brochure How to choose Electric Heaters Electric Fans  
Direct Fired Heaters Indirect Fired Heaters Special Sales on Heaters

Sign to accept Terms & Conditions:

Signature\_\_\_\_\_

Printed Name:\_\_\_\_\_

Position:\_\_\_\_\_

Date:\_\_\_\_\_