

TERMS AND CONDITIONS FOR THE HIRE AND SALE OF EQUIPMENT

1. INTERPRETATION

1.1 **Definitions:** In these Terms, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: the date that the Customer takes Delivery.

Company: Zig Zag Access Limited a company registered in England and Wales with registration number 04199262 whose registered office is at 174A Gelderd Road, Leeds West Yorkshire.

Contract: the contract between the Company and the Customer for the hire or sale of Equipment in accordance with the Order and these Terms. Each hire of an item of Hire Equipment or sale of an item of Sale Equipment shall form a separate and distinct Contract.

Customer: means the person, firm, company or other entity hiring the Hire Equipment or purchasing the Sale Equipment pursuant to a Contract.

Delivery: the transfer of physical possession of the Equipment to the Customer in accordance with clause 5.

Deposit: any advance payment required by the Company in relation to the Hire Equipment which is to be held as security by the Company.

Hire Equipment: any Equipment which is hired to the Customer.

Equipment: any items of equipment, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it which are hired or sold to a Customer pursuant to a Contract.

Order: the Customer's order for the Equipment provided in accordance with clause 2.3.

Rental Payment: the payment made by or on behalf of Customer for Hire Equipment.

Rental Period: the period of hire referred to in in clause 3.

Sale Equipment: any Equipment which is sold to the Customer.

Special Rate: a discounted Rental Payment agreed by the Company in consideration of a fixed term Rental Period.

Terms: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

Total Loss: due to the Customer's default the Equipment is, in the Company's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

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

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

1.2.2 A reference to a person includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes faxes and unless the context requires, words in the singular shall include the plural and vice versa.

2. BASIS OF CONTRACT

- 2.1 The Company shall hire or sell the Equipment to the Customer subject to these Terms and these Terms shall apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract. Any graphic or written description of the Equipment contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force and the Company reserves the right to amend the specification of the Equipment.
- 2.3 The Order, whether written or verbal, constitutes an offer by the Customer to hire or purchase (as the case may be) the Equipment in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order are complete and accurate. A quotation for the Equipment given by the Company shall not constitute an offer. The Order shall only be deemed to be accepted on the earlier of; the Company confirming acceptance of the Order, confirming the Equipment is ready for Delivery, or Delivery, at which point the Contract shall come into existence.
- 2.4 The Company shall not, other than in the exercise of its rights under these Terms or applicable law, interfere with the Customer's quiet possession of the Equipment.
- 2.5 Where the hire of the Hire Equipment is to a Customer who is an individual within the meaning of the Consumer Credit Act 1974 (**CCA**) and such hire would be covered by the CCA the term 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 Hire Equipment is not covered by the CCA.
- 2.6 Nothing in these Terms shall affect the statutory rights of the Customer if he "deals as a consumer" pursuant to section 12 of the Unfair Contract Terms Act 1977 (as amended from time to time).

3. RENTAL PERIOD

The period of rental or hire of the Hire Equipment shall be set out in the Order subject to such period:

- 3.1 starting on the Commencement Date;
- 3.2 including non-Business Days;
- 3.3 continuing until the earlier of the physical return of the Hire Equipment by the Customer into the Company's possession; or the physical repossession or collection of the Hire Equipment by the Company; and
- 3.4 being for a minimum period of one week, notwithstanding that the Rental Period may expire or be terminated prior to the expiry of such period.

4. PRICE, PAYMENTS AND DEPOSIT

- 4.1 The amount of any Rental Payment, the price of Sale Equipment or the amount of a Deposit shall be set out in the Order, or, if no price is quoted, the price set out in the Company's price list in force at the date of Delivery.
- 4.2 In the event that the Company agrees to set the amount of the Rental Payment at the Special Rate and the Customer terminates the Contract prior to the expiry of the relevant fixed term Rental Period, the Company shall be entitled to charge the Customer the Rental Payment calculated at the price set out in the Company's price list in force at the date of Delivery.
- 4.3 The Company may, by giving notice to the Customer at any time before Delivery, increase the amount of any Rental Payment, or price of Sale Equipment to reflect any increase in the cost of the Equipment that is due to:

- 4.3.1 any factor beyond the Company's control;
- 4.3.2 any request by the Customer to change the Delivery date(s), quantities or types of Equipment ordered; or
- 4.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 4.4 The Rental Payment and price of Sale Equipment is exclusive of the costs and charges of packaging, insurance, transport and Delivery (if any), which shall be invoiced to the Customer.
- 4.5 The Company shall invoice the Customer monthly in arrears for the Rental Payment for the duration of the Rental Period or on such other terms as agreed between the Customer and the Company and set out in the Order.
- 4.6 The Customer shall pay invoices for the Rental Payment in full and in cleared funds within 30 days of the date of such invoice, or on such other terms agreed between the Customer and the Company and set out in the Order.
- 4.7 The Company shall invoice the Customer for Sale Equipment and the Customer shall pay such invoice in such manner and on such terms as agreed between the Customer and the Company and set out in the Order.
- 4.8 All amounts payable under these Terms shall be paid in sterling in cash or cleared funds to the bank account nominated by the Company or as otherwise agreed between the Company and the Customer from time to time. Time of payment shall be of the essence.
- 4.9 All amounts payable under these Terms are, unless otherwise stated, exclusive of amounts in respect of value added tax (**VAT**). The Customer shall pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Equipment.
- 4.10 The Company may set a reasonable credit limit for the Customer. The Company reserves the right to terminate or suspend the Contract if the Customer's credit limit has been exceeded or if allowing such Contract to continue would result in the Customer exceeding such credit limit.
- 4.11 The Company reserves the right to store the Customer's credit card details and to use such details to secure payment of any overdue Rental Payment.
- 4.12 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 4.13 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then, without limiting the Company's remedies under clause 10, the Customer shall pay interest on the overdue amount at the higher of; 4% per annum above HSBC Bank Plc's base rate from time to time or the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 4.14 The Deposit is a deposit against default by the Customer of payment of any Rental Payment, an advance of the Rental Payment or any loss of or damage caused to the Hire Equipment. The Customer shall pay the Deposit to the Company prior to the Delivery. If the Customer fails to make any Rental Payment when due, or causes any loss or damage to the Hire Equipment (in whole or in part), the Company shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to the Company any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Rental Period.

5. DELIVERY AND COLLECTION

- 5.1 The Customer shall collect the Equipment from the Company's premises or such other location as may be specified by the Company (**Delivery Location**) within 3 Business Days of the Company notifying the Customer that the Equipment is ready. In the case of Hire

Equipment, the Customer shall return the Hire Equipment to the Delivery Location or such other location as advised by the Company at the end of any Rental Period.

- 5.2 In the event that the Company agrees to Deliver and/or collect Equipment from a location specified by the Customer (**Customer Location**), the Company shall be entitled to charge the Customer in accordance with clause 4.4. Delivery and/or collection by the Company from a Customer Location is at the entire discretion of the Company and shall take place at such date and time as specified by the Company.
- 5.3 Delivery of the Equipment shall be completed on the completion of loading of the Equipment at the Delivery Location or Customer Location (as the case may be).
- 5.4 Any dates quoted for Delivery and/or collection (as the case may be) are approximate only, and the time of Delivery is not of the essence. The Company shall not be liable for any delay or failure in Delivery that is caused by the Customer's failure to provide the Company with adequate Delivery instructions or any other instructions that are relevant to the Delivery.
- 5.5 If the Customer fails to take Delivery or make arrangements for Delivery to a Customer Location within 3 Business Days of the Company notifying the Customer that the Equipment is ready, then, except where such failure or delay is caused by the Company's failure to comply with its obligations under the Contract:
 - 5.5.1 Delivery shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Customer that the Equipment was ready; and
 - 5.5.2 the Company shall store the Equipment until Delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.6 If 10 Business Days after the day on which the Company notified the Customer that the Equipment was ready for Delivery the Customer has not taken Delivery or made arrangements for Delivery to a Customer Location, the Company may resell (in the case of Sale Equipment), rehire (in the case of Hire Equipment) or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of Sale Equipment or charge the Customer for any shortfall below the price of Sale Equipment.
- 5.7 The Customer shall procure that a duly authorised representative of the Customer shall be present at the Delivery. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Company, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

6. TITLE, RISK AND INSURANCE

- 6.1 Hire Equipment shall at all times remain the property of the Company, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of the Contract).
- 6.2 Title to the Sale Equipment shall not pass to the Customer until the Company receives payment in full for the Sale Equipment and any other Equipment that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Sale Equipment shall pass at the time of payment of all such sums.
- 6.3 If before title to the Sale Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 10.4, then, without limiting any other right or remedy the Company may have the Company may at any time
 - 6.3.1 require the Customer to deliver up the Sale Equipment; and
 - 6.3.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Sale Equipment is stored in order to recover them.
- 6.4 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Hire Equipment shall remain at the sole risk of the Customer during the Rental Period during which the Hire Equipment is in the possession, custody or control of the

Customer (**Risk Period**) until such time as the Hire Equipment is returned to the Company subject to the Company collecting the Hire Equipment within a reasonable period in the event that collection from a Customer Location is agreed. During the Rental Period and the Risk Period and any period after a Delivery relating to Sale Equipment but prior to title to the Sale Equipment passing to the Customer, the Customer shall if requested by the Company, at its own expense, obtain and maintain the following insurances:

- 6.4.1 insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing;
 - 6.4.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - 6.4.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to the Customer.
- 6.5 All insurance policies procured by the Customer shall be endorsed to provide the Company with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Company's request name the Company on the policies as a loss payee in relation to any claim relating to the Hire Equipment or Sale Equipment (as appropriate). The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 6.6 If the Customer fails to effect or maintain any of the insurances required under the Contract, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 6.7 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.

7. CUSTOMER'S RESPONSIBILITIES

- 7.1 The Customer shall during the Rental Period or until title to any Sale Equipment (as appropriate) has passed to the Customer:
- 7.1.1 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed and not for any unlawful purpose, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
 - 7.1.2 take such steps (including compliance with all safety and usage instructions, tests and checks provided by the Company, implied by legislation or best practice) as may be necessary to ensure, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained;
 - 7.1.3 make no alteration to, repair or attempt to repair the Equipment and shall not remove any existing component(s) from the Equipment;
 - 7.1.4 keep the Company fully informed of all material matters relating to the Equipment including any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment;
 - 7.1.5 at all times keep the Equipment in the possession or control of the Customer, keep the Company informed of its location and not remove the Equipment from the Country where the Customer and/or the Company is located without the Company's consent;
 - 7.1.6 permit the Company or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon any premises at which

- the Equipment may be located, and grant reasonable access and facilities for such inspection;
- 7.1.7 not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 7.1.8 not without the prior written consent of the Company, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Company against all losses, costs or expenses incurred as a result of such affixation or removal;
- 7.1.9 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Company may enter such land or building and recover the Equipment both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Company of any rights such person may have or acquire in the Equipment and a right for the Company to enter onto such land or building to remove the Equipment;
- 7.1.10 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Company and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 7.1.11 ensure that at all times the Equipment remains identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- 7.1.12 deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract at such address as the Company requires, or, if necessary, allow the Company or its representatives access to any premises where the Equipment is located for the purpose of removing the Equipment and ensure that the Equipment is easily accessible for the purposes of such removal; and
- 7.1.13 not do or permit to be done anything which could invalidate the insurances referred to in clause 6.
- 7.2 The Customer shall during and after expiry of any Rental Period:
- 7.2.1 make good any damage to the Hire Equipment (fair wear and tear only excepted) caused by the Customer during the Rental Period and be liable for the cost of any cleaning required to return the Hire Equipment to a condition fit for re-hire; and
- 7.2.2 pay the Rental Payment to the Company until such date as the Hire Equipment is returned to a condition suitable for re-hire.
- 7.3 In relation any Hire Equipment that is a Total Loss during the Rental Period, the Customer shall:
- 7.3.1 be liable to pay the Rental Payment up to and including the date on which it notifies the Company that the Hire Equipment is a Total Loss;
- 7.3.2 from the date that the Customer notifies the Company that the Hire Equipment is a Total Loss until the date that the Company has replaced such Hire Equipment (such replacement not to be unreasonably delayed) (**Lost Hire Period**) the

Customer shall pay the Company a sum equal to two thirds of the applicable Rental Payment for the relevant Hire Equipment until the expiry of the Lost Hire Period. The parties agree that such sum represents a genuine pre-estimate of profits;

- 7.3.3 pay to the Company the full cost of a new replacement piece of equipment the same as or similar to the Hire Equipment less than twelve (12) months old from date of manufacture; and
 - 7.3.4 reimburse the Company the market value of any Hire Equipment more than twelve (12) months old from date of manufacture,
less the amount paid to the Company under any policy of insurance in relation to such Hire Equipment.
- 7.4 The Customer acknowledges that the Company shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse or mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Company on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with these Terms.

8. QUALITY

- 8.1 Insofar as the Sale Equipment comprises or contains equipment or components which were not manufactured or produced by the Company, the Customer shall be entitled only to such warranty or other benefit as the Company has received from the manufacturer.
- 8.2 The Company shall at its own expense undertake all routine maintenance of the Hire Equipment in order to keep it in as good an operating condition as it was on the Commencement Date and use its reasonable endeavours to remedy, free of charge, any material defect in the Hire Equipment which manifests itself within the Rental Period, provided that:
 - 8.2.1 the Customer notifies the Company of any defect in writing as soon as practicable from the date of the defect occurring;
 - 8.2.2 the Company is permitted to make a full examination of the alleged defect;
 - 8.2.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Company's authorised personnel; and
 - 8.2.4 the defect is directly attributable to defective material, workmanship or design.
- 8.3 If the Company fails to remedy any material defect in the Hire Equipment within a reasonable time in accordance with clause 8.2, the Company shall, at the Customer's request, accept the return of the Hire Equipment and make a proportionate reduction to the Rental Payment based on the period from the Commencement Date to the date the Customer returns the Hire Equipment to the Company.

9. LIABILITY

- 9.1 Nothing in these Terms shall limit or exclude the Company's liability for:
 - 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 9.1.2 fraud or fraudulent misrepresentation;
 - 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 9.1.4 defective products under the Consumer Protection Act 1987; or
 - 9.1.5 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 9.2 Subject to clause 9.1:

- 9.2.1 the Company shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
- 9.2.2 the Company's liability for any loss or damage to the Customer's property shall be limited to the retail cost of the replacement of such property;
- 9.2.3 the Company shall have no liability to the Customer if, without just cause, any monies due in respect of the Equipment have not been paid in full on the due date for payment;
- 9.2.4 the Company shall have no liability for additional damage, loss, liability, claims, costs, expenses caused or contributed to by the Customer's continued use of defective Equipment after a defect has become apparent or should reasonably have become apparent to the Customer;
- 9.2.5 if the Company has requested the return of defective Equipment the Company shall not be liable to the Customer for such defective Equipment until it is returned to the Company for inspection;
- 9.2.6 the Company shall have no liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged pursuant to the Contract and the Customer shall procure that the insurer any right of subrogation that it may have against the Company;
- 9.2.7 the Customer shall give the Company a reasonable opportunity to remedy any matter for which the Company may be liable prior to incurring any cost and/or expenses in remedying the matter itself. If the Customer fails to do so the Company shall have no liability to the Customer.
- 9.2.8 the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the higher of 5 times the amount of such Customers monthly Rental Payment (or proportion thereof if the Rental Period is less than a month) or equal to the monies payable for Sale Equipment or the sum of £1,000.00.
- 9.3 These Terms set out the full extent of the Company's obligations and liabilities (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) in respect of the Equipment. There are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Company except as specifically stated in these Terms. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

10. TERMINATION

- 10.1 Subject to the provisions of this clause 10, the Company shall be entitled to terminate the Contract with immediate effect on written notice and, the Customer shall be entitled to terminate the Contract with immediate effect on the physical return of the Hire Equipment into the Company's possession.
- 10.2 Without limiting its other rights or remedies, if the Customer becomes subject to any of the events listed in clause 10.3, the Company may, at its entire discretion, terminate the Contract or suspend provision of the Equipment under the Contract or any other contract between the Customer and the Company with immediate effect by giving written notice to the Customer.
- 10.3 For the purposes of clause 10.2, the relevant events are:
- 10.3.1 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 10.3.2 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations

- under the Contract has been placed in jeopardy or in any event, the Customer commits an act of insolvency or bankruptcy or any analogous event of any kind whatsoever;
- 10.3.3 the Customer becomes subject to any of the relevant events listed in clauses 10.3.1 and 10.3.2 or the Company reasonably believes that the Customer is about to become subject to any of them;
- 10.3.4 the Customer fails to pay any amount due under a Contract on the due date for payment;
- 10.3.5 commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or
- 10.3.6 the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract.
- 10.4 This Contract shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 10.5 Upon termination of the Contract, however caused:
- 10.5.1 the Company's consent to the Customer's possession of the Hire Equipment shall terminate and the Company may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Hire Equipment and for this purpose may enter any premises at which the Equipment is located; and
- 10.5.2 without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Company on demand:
- 10.5.2.1 all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued;
- 10.5.2.2 any costs and expenses incurred by the Company in recovering the Equipment and/or in collecting any sums due under the Contract.
- 10.6 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 10.7 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. FORCE MAJEURE

The Company shall not be in breach of any Contract nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the Company shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 14 days, the party the Customer may terminate the Contract by giving 14 days' written notice to the Company.

12. GENERAL

12.1 Assignment and other dealings

- 12.1.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

12.2 Notices

- 12.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other

address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax.

12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

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

12.3 **Severance**

12.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

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

12.4 **Waiver**

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **Third party rights**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.6 **Variation**

Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.

12.7 **Governing law**

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.

12.8 **Jurisdiction**

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