

Sustainable Site Solutions



Standard Terms And Conditions Of Hire, Sale And Services

VERSION

09



These terms and conditions apply to the hire and sale of Equipment and the supply of Services by Garic Limited (company number 2220727). Any references to “we”, “us” or “our” means Garic Limited. These terms and conditions are split into different parts, with the provisions in each part applying as follows:

PART 1: The provisions in Part 1 apply to all Contracts made with us, whether for the hire or purchase of Equipment from us or the supply of Services by us. Your attention is drawn in particular to the provisions of Condition 4 (Limitation of liability). One or more of the following parts will also apply, depending on whether you are hiring Equipment, purchasing Equipment and/or receiving Services from us.

PART 2: The provisions in Part 2 apply to contracts for the hire of Equipment from us.

PART 3: The provisions in Part 3 apply to contracts for the purchase of Equipment from us and to contracts for the supply of Services by us.

We enter into contracts with business customers only. We don't hire or sell Equipment or provide Services to consumers. You are a business customer if you are buying products wholly or mainly for use in connection with your trade, business, craft or profession, even if you are an individual.

PART 1

PROVISIONS THAT APPLY TO ALL CONTRACTS

1. DEFINITIONS

1.1 In these Conditions the following words have the following meanings:

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

Conditions: these Garic Limited Standard Terms and Conditions of Hire, Sale and Services (Version 9), as amended from time to time in accordance with Condition 6.1 of Part 1;

Contract: the legally binding contract between you and us incorporating these Conditions, created by us issuing our written Order Confirmation;

Customer: the company, firm, person, organisation or public authority (including their permitted successors, assignees or personal representatives) hiring or purchasing the Equipment and/or Services from Garic. Any references to “you” or “your” means the Customer;

Customer Agreement: a written bespoke framework agreement entered into between you and us in relation to the hiring and/or purchase of Equipment and/or Services;

Customer Representative: your employees, officers, representatives, contractors, subcontractors, advisers and anyone else present at the Site; **Data Protection Legislation:** all applicable data protection and privacy legislation from time to time in force in the UK including the UK GDPR (as defined in section 3(10) of the Data Protection Act 2018), the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426);

Delivery: the delivery the Equipment, or performance of the Services, in accordance with these Conditions;

Delivery Date: the date for delivery the Equipment, or performance of the Services, as set out in the Order Confirmation or confirmed in writing by us from time to time. Where Equipment is to be erected on the Site by us, the Delivery Date shall be the date of completed erection of the

Equipment; Equipment: all plant, tools, machinery, accommodation, toilets, vehicles, equipment, commodities, ancillaries and accessories, or part of them, which we agree to hire or sell to you, as the case may be, in accordance with these Conditions as described in the Order Confirmation or relevant

Scope of Work; Head Finance Agreement: a finance agreement between us and a third party under which we have possession of the Equipment;

Hire Delivery Note: the document (including electronic documents) provided by us recording the time and place of delivery or collection;

Hire Period: the period of hire of the Equipment as described in Condition 1.2 of Part 2;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Order: your order for the hire or purchase, as the case may be, of the relevant items of Equipment and/or Services as stated in the Order;

Order Confirmation: our written acceptance of your Order;

Scope of Work: our written statement of Services to be provided by us to you;

Services: the waste and/or fuel services, or the provision of professional advice, supervision and management services, to be supplied by us to you as set out in the Order Confirmation or relevant Scope of Work.

Site: your premises or such other location specified in the Order, relevant Scope of Work or otherwise agreed in writing by you and us for the delivery of the Equipment and/or provision of the Services;

Working Day: 8 (eight) hours or if the day is a Friday it shall be 7 (seven) hours, unless otherwise specified in the Contract;

Working Week: Business Days during the period from starting time on Monday to finishing time on Friday.

1.2 The headings used in the Contract are for convenience only and shall not affect the construction thereof.

- 1.3 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. BASIS OF CONTRACT

- 2.1 Subject to Condition 2.2, these Conditions apply to and are incorporated into all Contracts and will be the only terms and conditions under which we hire or sell Equipment, or provide Services, to you. No other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing will form part of the Contract.
- 2.2 No terms or conditions endorsed upon, delivered with or contained in your request for quotation, order, invoice or similar document shall form part of the Contract and you waive any right you might otherwise have to rely on such terms and conditions.
- 2.3 If you have entered into a Customer Agreement with us, the provisions of the Customer Agreement shall prevail over any conflicting or inconsistent provisions in these Conditions.
- 2.4 Each Order (either written, including email, or verbal) constitutes an offer by you to hire or purchase Equipment and/or receive Services from us subject to these Conditions.
- 2.5 You are responsible for:
- a) ensuring the accuracy of the terms of any Order you submit to us (including providing the correct delivery/ collection address and contact details); and
 - b) ensuring the accuracy of all specifications, patterns, drawings, photographs, samples, designs and information that you provide to us relating to the Equipment and/or the Services; and
 - c) providing us with all such information relating to the Equipment and/or the Services within a reasonable time to enable us to perform our obligations under the Contract in accordance with these Conditions.
- 2.6 An Order shall only be deemed to be accepted when we issue a written Order Confirmation, at which point and on which date the Contract shall come into existence.
- 2.7 Any quotation or estimate given by us is given subject to these Conditions, shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3. RESPONSIBILITY OF THE PERSON ENTERING THE CONTRACT

- 3.1 You warrant and undertake to us that the person entering the Contract (and/or placing the Order as relevant) has your authority to execute and enter into the Contract on your behalf.
- 3.2 It is your responsibility to ensure that the Site is safe and suitable for the receipt and use of the Equipment and/or Services.
- 3.3 If you seek any advice or recommendation from any of our employees or representatives, you understand and accept that such advice or recommendation is given for information only and does not relieve or reduce your obligation to make

your own independent assessment as to the adequacy or suitability of the Equipment and/or Services for your needs. Any such advice or recommendation given by any of our employees or representatives is relied upon entirely at your own risk, and we shall have no liability for any loss or damage whatsoever or howsoever arising in reliance upon such advice or recommendation.

- 3.4 You shall be liable for the acts and/or omissions of your Customer Representatives as though they were your own acts and/or omissions under the Contract.

4. LIMITATION OF LIABILITY

- 4.1 This Condition 4 sets out our liability under or in connection with the Contract. References to liability in these Conditions include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise for any and all damages, claims, proceedings, actions, awards, expenses, costs (including all legal costs and disbursements) and any other losses and/or liabilities.
- 4.2 Nothing in these Conditions shall limit or exclude our liability for death or personal injury caused by our negligence (or the negligence of our employees, agents or subcontractors), fraud or fraudulent misrepresentation, or any other liability in respect of which it would be illegal or unlawful for us to exclude or limit our liability.
- 4.3 We shall have no liability to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations if the delay or failure was due to:
- a) any event, cause or circumstance beyond our reasonable control; or
 - b) you failing to provide us with adequate delivery instructions or any other instructions that are relevant to the hire or supply of the Equipment and/or provision of the Services. Events, causes or circumstances beyond our reasonable control include:
 - i. Acts of God, explosions, floods, tempest, fires or accidents;
 - ii. Epidemics or pandemics;
 - iii. wars or threat of war, sabotage, insurrection, civil disturbances or requisitions;
 - iv. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - v. import or export regulations or embargoes;
 - vi. strikes, lock-outs or other industrial actions or trade disputes or non-availability of employees (whether involving our employees or those of a third party);
 - vii. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - viii. power failure or breakdown in machinery;
 - ix. weather conditions, and/or ground conditions;
 - x. transport failures, traffic congestion; or
 - xi. any other cause (whether or not of the same nature as the foregoing) which is beyond our reasonable control.

4.4 Subject to Condition 4.2, we shall have no liability to you under or in connection with any Contract for any:

- a) loss of profit;
- b) loss of revenue;
- c) loss of or damage to goodwill;
- d) loss of business;
- e) loss of use of Equipment or any other asset or facility;
- f) loss of production or productivity;
- g) wasted expenditure;
- h) loss of contracts with any third party;
- i) liabilities of whatever nature to any third party;
- j) any other financial or economic loss;
- k) any indirect or consequential loss or damage of whatever nature and howsoever arising, in each case whether reasonably foreseeable or otherwise.

4.5 Subject to Condition 4.2 and Condition 4.4 above, our total liability to you under or in connection with the Contract shall be limited to the price paid by you under the Contract for the Equipment or Services giving rise to the liability.

4.6 You acknowledge that in entering into the Contract you have not relied on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

5. PUBLICATIONS DISCLAIMER

5.1 We give no warranty or guarantee as to the accuracy or completeness of any information provided in our printed and online publications. Any samples, drawings, descriptive matter, online publications or content or advertising issued by us and any description of the Equipment and/ or Services contained in our catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Equipment and/or Services described in them. They shall not form part of the Contract and are provided for information only. Full technical specifications can be obtained from us on request and we reserve the right to alter issued or published details and information from time to time. We accept no liability in respect of any errors or omissions therein contained or for reliance upon our publications or published information.

5.2 Any products shown in our printed or online publications do not represent endorsement by us of any other products, services or organisations, and any colour reproductions of the garments featured in printed and online publications are provided for illustration only.

5.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, or other document or information issued by us shall be subject to correction entirely at our discretion and without any liability to you.

6. VARIATIONS TO THE CONTRACT AND WAIVER

6.1 No variation of the Contract shall be effective unless it is in writing expressly stating that it is a variation of the Contract and signed by the parties (or their authorised

representatives).

6.2 A waiver of any right or remedy is only effective if given by express written notice and shall not be deemed a waiver of any subsequent right or remedy.

6.3 delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

7. CONFIDENTIALITY

7.1 You undertake to us to keep all information in connection with the Contract and the hire or sale of Equipment and/or receipt of Services confidential, except where:

a) such information is, or comes into, the public domain other than due to wrongful use or disclosure by you;

b) disclosure or use is necessary by you in connection with this Contract or for the performance of your obligations under this Contract (including disclosure by you to your insurer and professional advisers); or

c) disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign).

7.2 You will ensure that your Customer Representatives and nominees comply with the requirements of this Condition 7.

8. DATA PROTECTION

8.1 You and we shall each comply with our respective obligations under the Data Protection Legislation.

8.2 We shall collect and process personal data in respect of its website and business activities in accordance with our Privacy Policy which is available at <https://garic.co.uk>.

9. NOTICES

9.1 Any notice given to a party under or in connection with this Contract shall be in writing and shall be:

a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

b) sent by email to you at the address stated in your Order and to us at the address stated in our Order Confirmation.

9.2 Any notice shall be deemed to have been received:

a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

b) if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting or at the time recorded by the delivery service; or

c) if sent by email, at 9am (in the place of receipt) on the next Business Day after transmission.

9.3 This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10. GENERAL

- 10.1 All amounts payable by you under the Contract are exclusive of VAT (as applicable).
- 10.2 This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 10.3 Each provision of the Contract is distinct and severable from the others. If at any time one or more of those provisions is or becomes invalid, unlawful or unenforceable (whether wholly or partly) it shall be deemed deleted with the minimum deletion necessary to make the provision valid, lawful, enforceable, but that shall not affect the validity, lawfulness and enforceability of the remaining provisions (or the same provision to any other extent) in any way.
- 10.4 You are not entitled to assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract or any part of it without our prior written consent.
- 10.5 We may at any time assign, transfer, subcontract, mortgage, charge, delegate and/or declare a trust over or deal in any other manner with any or all of our rights and obligations under the Contract or any part of it.
- 10.6 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by the laws of England and Wales.
- 10.7 Subject to any rights to adjudicate pursuant to Condition 12.3, you and we irrevocably agree that the courts of England and Wales have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 10.8 Where the Housing Grants Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 applies to the Contract, any dispute or difference arising under or in connection with the Contract may be referred to adjudication in accordance with the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011) (the "Scheme for Construction Contracts"). The Adjudicator shall be such person as may be appointed in accordance with the provisions of paragraph 2(1)(b) of the Scheme by the Royal Institution of Chartered Surveyors. The Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts.
- 10.9 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of their functions as Adjudicator unless the act or omission is in bad faith, and an employee or agent of the Adjudicator is similarly protected.

PART 2

PROVISIONS THAT APPLY TO CONTRACTS FOR THE HIRE OF EQUIPMENT

1. COMMENCEMENT AND TERMINATION OF HIRE

- 1.1 Equipment is offered for hire, subject always to availability at the time of Order Confirmation. We will not have any liability as a result of the Equipment being unavailable for hire.
- 1.2 Except where otherwise stated in these Conditions, the Hire Period will commence on the Delivery Date and will continue (including Saturdays, Sundays or Bank or other statutory holidays) until the earlier of (i) you returning the Equipment to our possession; or (ii) we repossess or collect the Equipment. The Delivery Date and day ending the Hire Period will be charged as full days.
- 1.3 The minimum Hire Period for all Equipment is:

Equipment	Minimum Hire Period
Modular Buildings	52 weeks
Wheel Wash Systems	4 weeks
Site Accommodation	4 weeks
All other Equipment	1 week
- 1.4 You will be charged for the respective minimum Hire Period even if the duration of hire is less (unless agreed otherwise in the Order Confirmation).
- 1.5 Subject to the minimum hire periods set out in Condition 1.3 of this Part 2 above, you must give us at least 7 (seven) Business Days' notice in writing of your intention to off-hire the Equipment, save where the Hire is for wheel wash systems or modular buildings where at least 10 (ten) Business Days' notice of off-hire must be given.
- 1.6 We will not charge you any hire charges for any period after which we have issued an off-hire reference number for the item of the Equipment, provided that you shall still be responsible for such hire charges for those items if you are unable to provide us with the off-hire reference number for that item of the Equipment.
- 1.7 In the event that any item of the Equipment which is off-hired is not available for collection when we attend the Site to collect it, such Equipment shall be deemed with immediate effect to be placed back on hire, and all hire charges and costs shall be due in accordance with these Conditions. You shall be responsible for our reasonable costs and expenses incurred in seeking to collect such off-hired items.
- 1.8 You may cancel a Contract at any time until the date falling 3 (three) Business Days prior to the Delivery Date (the "Cancellation Date"), by giving us written notice of your intention to cancel. Any notice received after the Cancellation Date but prior to the Delivery Date will incur the following collection/relocation/abortive journey charges:

Equipment	Cancellation Charge
Towable	25% of transport charge
Dropside Flat bed	25% of transport charge
Rigid with Crane	50% of transport charge
Rigid with Crane and Drag Trailer	75% of transport charge
Artic with Crane	100% of transport charge
Welfare Van Delivery	25% of transport charge
Wheelwash/Abnormal Load	100% of transport charge

1.9 If you wish to suspend the Hire Period at any time, you must submit to us your written request to do so at least 14 (fourteen) days in advance. We will confirm our agreement to the suspension or otherwise in writing and no suspension allowance will be made unless confirmed by us in writing. During any period of suspension the Equipment shall remain at your risk and shall be kept in your possession, unless we require otherwise (at our sole discretion).

1.10 Without affecting any other right or remedy available to us, we may terminate the Contract at any time immediately by giving you notice if:

- a) You fail to pay any sum due to us by the final date for payment and you still do not make payment within 14 days of our reminding you that payment is due; or
- b) You fail to observe and perform any other terms and conditions of this Contract; or
- c) You do not, within a reasonable time of us asking for it, provide us with information, cooperation or access that we need in relation to the Equipment, for example if we need to assess a suspected/ alleged defect on the Equipment.
- d) You take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- e) We reasonably suspect that any of the events mentioned above is about to occur and we notify you accordingly; or
- f) You suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of your business; or
- g) Your financial position deteriorates so far as to reasonably justify the opinion that your ability to give effect to the terms of the Contract is in jeopardy.

1.11 Where Equipment is subject to a Head Finance Agreement and the owner of the Equipment becomes entitled to require possession of that Equipment under the terms of the Head Finance Agreement, we may terminate the Contract under which that Equipment is hired to you by giving to you 30 (thirty) days written notice, without liability to you and without affecting any of our rights or remedies.

1.12 On termination of the Contract, or the off-hire of any part of the Equipment, for any reason, we:

- a) may promptly retake possession of the Equipment and for that purpose you hereby grant to us permission to enter into or upon the Site or any other premises (at such a time as we deem it safe to do so) where the same may be;
- b) you shall pay to us:
 - i. the hire charges until the Equipment is collected or returned to our possession;
 - ii. any direct loss and/or expense incurred by us as a result of the termination;
 - iii. the cost of recovering and collecting the Equipment; and
 - iv. damages for any actual or deemed breach of the Contract by you.

c) Termination of the Contract shall not affect our rights of Garic to recover from you any monies due to us under the Contract or any of our other rights and remedies.

2. DELIVERY AND COLLECTION

2.1 Delivery or collection by us is not included in the hire charges and will be invoiced to you as an extra cost (as determined by us from time to time).

2.2 Where we have agreed under an Order Confirmation to provide transport for the Equipment to or from the Site:

- a) We will make reasonable efforts to deliver and collect the Equipment at the agreed time (if any) however we shall have no liability for the consequences of any delay in the delivery or collection at the Site however arising;
- b) You will provide or ensure that unobstructed, secure, safe and unrestricted access to and over the Site is in every respect available and suitable for the vehicle used for transporting the Equipment;
- c) If the ground (including any private access road or track) is soft, unsecure, unsafe or unsuitable for the Equipment to work on, travel or be transported over without timbers or equivalents you shall immediately supply and lay suitable timbers or equivalents in a suitable position for the Equipment to travel over, work on or be transported over, including for the purpose of delivery and collection;
- d) Where the Equipment is modular buildings, you must provide suitable foundations or hard standing which meet our requirements for the Contract and a lay down area for installation and removal of the Equipment.
- e) Where the hire is for lifting equipment, any sound timber or other material supplied by us for use with outriggers and/or stabilisers is provided:
 - i. at your cost, which shall be invoiced by us; and
 - ii. solely at your risk and expressly not to relieve you of your legal, regulatory or contractual obligations to ensure adequate stability of the lifting equipment under the imposed loading;
- f) Unless we have agreed otherwise in the Order Confirmation, you will load or unload the Equipment at the Site with all skill, care and diligence.

2.3 You must not cause us to be unduly delayed on the Site. We may charge for any delays on the Site exceeding 60 minutes (as determined by us from time to time).

2.4 You must procure that your duly authorised representative be present at the Site on Delivery Date for the Equipment. You (or a Customer Representative) shall sign a Hire Delivery Note at the time of delivery or collection of the Equipment. When the Equipment is delivered or collected by us in your (or a Customer Representative's) absence, the Hire Delivery Note will be forwarded to your address as soon as reasonably practicable and, in the case of delivery, will be deemed to be conclusive proof of delivery of the Equipment in good clean working order.

2.5 You must notify us in writing or verbally of any damage to the Equipment when it is delivered to the site and any such damage must be noted on the Hire Delivery Note at the time of delivery. If no damage is noted, the Equipment is deemed

to be in good order, complete and in a good condition in accordance with the Conditions of the Contract, save for any latent defects not reasonably apparent on inspection.

- 2.6 You must give us at least 24 (twenty four) hours written notice if you instruct us to collect the Equipment from the Site at the end of the Hire Period, unless the Equipment is modular buildings in which case you must give us at least 10 (ten) Business Days' notice.
- 2.7 If you instruct us to collect the Equipment from the Site, you remain responsible for the safekeeping and security of the Equipment until we have collected it. We will use reasonable endeavours to collect the Equipment within 7 (seven) Business Days after we have issued an off-hire reference number for the item of the Equipment (except where the Hire is for wheel wash systems or modular buildings in which case we will use reasonable endeavours to collect the Equipment within 10 (ten) Business Days after we have issued an off-hire reference number for the item);
- 2.8 You will be responsible for the cost or expense of recovering any Equipment from soft or unsuitable ground, or any unsafe and/or hazardous environment.

3. TITLE, RISK AND INSURANCE

- 3.1 The Equipment shall at all times remain the property of Garic, and you shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment during the Hire Period subject to these Conditions).
- 3.2 Risk of damage to or loss or theft of the Equipment shall pass to you on the transfer of physical possession of the Equipment to you (or a Customer Representative) at the Site.
- 3.3 The Equipment shall remain at your sole risk for the duration of the Hire Period and any further period during which the Equipment is in your possession, custody or control.
- 3.4 At all times while the Equipment is at your risk you shall, at your own expense, obtain and maintain the following insurances with a reputable insurer:
 - a) 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 we may from time to time nominate in writing;
 - b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as we 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;
 - c) insurance against any and all liabilities you might incur under the Contract; and
 - d) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as we may from time to time consider reasonably necessary and advise to you in writing.
- 3.5 You shall be solely responsible for notifying your insurers of the type of the Equipment being hired from us (including details regarding the size and type of any vehicle(s) being hired).
- 3.6 You will, on our request, at any time produce to us evidence

of the insurance policies required above and Garic shall be named as a loss payee in relation to any claim relating to the Equipment.

- 3.7 If you fail to keep the Equipment insured to our satisfaction or fail to produce evidence of insurance, we may, at your expense, insure the Equipment and you will pay to us on demand any sums expended by us for such purpose.
- 3.8 If you receive any money as settlement of any insurance claim relating to the damage to or loss or theft of the Equipment, you must hold that money separately in trust for us and pay it to us on demand. You must not negotiate any insurance claim relating to the Equipment without our written permission.

4. YOUR RESPONSIBILITIES

- 4.1 You must use the Equipment only for the purpose for which it is designed.
- 4.2 At all times during the Hire Period you are responsible for:
 - a) the Equipment's storage, safe keeping and security (including during any bank or public holidays);
 - b) ensuring the observance of all proper safeguards and precautions against accidents in connection with the use of the Equipment and in compliance with all health and safety laws and regulations;
 - c) obtaining at your cost all consents, permissions, authorisations and licences required for the hire and operation of the Equipment at the Site (or any other premises at which the Equipment is permitted to be used or located), including but not limited to planning consents and building control and building regulations;
 - d) checking the calibration of the Equipment on each occasion before use. Final determination of the suitability of the Equipment for any specific use is your responsibility and you assume all risk and liability in this regard;
 - e) ensuring use of the Equipment by your authorised and trained persons only in a skilful, diligent and proper manner in accordance with any operating instructions provided and within the manufacturer's rated capacity;
 - f) the Equipment's day to day service checks (including, but not limited to, cleaning, greasing, oiling and maintaining water, oil and fuel levels) at your own expense. Unless we have agreed otherwise in writing, you must ensure the correct type and grade of fuel, oil and grease is used in the Equipment. You warrant and undertake that you will not incorrectly use any rebated fuel in the Equipment;
 - g) ensuring that the Equipment is not used or stored in an environment that could result in the Equipment being affected by any type of corrosion or erosion. You are solely responsible for all costs and/or expenses incurred in repairing or replacing the Equipment damaged as a result of the Equipment being used or stored in a corrosive or erosive environment;
 - h) keeping the Equipment at all times in your possession or control and keep us informed of its location;
 - i) draining all pumps within the Equipment before any frost/cold periods to prevent damage and you shall be responsible for any damage or breakdown caused by freezing water;

- j) take all necessary steps to keep fully acquainted, aware and up to date with the state and condition of the Equipment and keep keeping us fully informed of all material matters relating to the Equipment, including notifying us immediately upon becoming aware of any damage and or defect to, in or with the Equipment, whether such damage occurs before, during or after the Hire Period. If the Equipment is continued in use after it is known by you to be in an unsafe or unsatisfactory state or environment you shall be solely responsible for any further damage, loss or accident;
 - k) permitting us or our duly authorised representatives to inspect the Equipment at all reasonable times and for such purpose to enter on the Site or any premises at which the Equipment may be located, and you shall grant or procure for us reasonable access and facilities for such inspection;
 - l) maintaining operating and maintenance records of the Equipment and making copies of such records readily available to us, together with such additional information as we may reasonably require;
 - m) cleaning and checking the full optimisation of solar panels Equipment on a daily and weekly basis;
 - n) ensuring that at all times the Equipment remains identifiable as being our property and wherever possible you shall ensure that a visible sign to that effect is attached to the Equipment;
 - o) the safety of all personal property, items and goods left in any Equipment by you or Customer Representatives; and
 - p) return of the Equipment to us at the end of the Hire Period (including if necessary allowing us or our representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment) in the same condition as when the Equipment was delivered to you including at your own expense replacement of worn, damaged and lost parts and making good any damage to the Equipment (fair wear and tear excepted, which shall be determined at our sole discretion).
- d) suffer or permit the Equipment to be confiscated, seized or taken out of your possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, you shall notify us immediately and you shall at your sole expense use your best endeavours to procure an immediate release of the Equipment;
 - e) if applicable, remove, deface or cover up Garic's name plate, Equipment number or any other mark on the Equipment indicating that it is our property;
 - f) without our prior written consent, move or attempt to move any part of the Equipment (except vehicles) from the Site. In any event, you shall ensure that the Equipment will not be used outside of England, Scotland and Wales.
 - g) continue to use the Equipment where the Equipment is damaged and will notify us immediately if the Equipment is involved in an accident resulting in damage to the Equipment, property and/or injury to another person;
 - h) without our prior written consent, 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 (at your cost) without material injury to such land or building and you shall repair and make good at your cost any damage caused by the affixation or removal of the Equipment from any land or building;
 - i) do or permit to be done any act or thing which will or may jeopardise our right, title or interest in the Equipment and, where the Equipment has become affixed to any land or building, you must take all necessary steps to ensure that we may enter such land or building and recover the Equipment both during the Hire Period 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 our favour of any rights such person may have or acquire in the Equipment and a right for us to enter onto such land or building to remove the Equipment;

4.3 You must not:

- a) use the Equipment for any unlawful purpose;
- b) without our prior written consent, re-hire, sell, mortgage, charge, pledge, part with possession or control of (including for the purposes of repair or maintenance) or otherwise deal with the Equipment, nor allow the creation of any mortgage, charge, lien or other security interest in respect of the Equipment. We may at our discretion give consent for re-hire of the Equipment on the condition that such re-hire is subject to terms determined by us. In any event the terms of the re-hire must be no less favourable to us than these Conditions;
- c) without our prior written consent, repair, modify, or alter the Equipment (including the changing or repair of any tyre/puncture), nor remove any existing component (or components) from the Equipment, unless the component (or components) is (or are) replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of the same make and model or an improved or advanced version of it at your cost. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in us immediately on installation;
- j) do or permit to be done anything which could invalidate the insurances required to be maintained by you under these Conditions.

4.4 All Equipment is supplied without fuel unless specified in the Order Confirmation and paid for by you. vehicles are supplied with approximately a quarter of a tank of fuel on Delivery and must be returned by you with at least a quarter of a tank of fuel. If the vehicle is returned with less than a quarter of a tank of fuel you will be liable to us for the cost of any shortage at our prevailing rate per litre.

4.5 In respect of all vehicles, you shall during the Hire Period:

- a) follow the instructions provided by us or the manufacturer as to checks on the vehicle to be made on a daily, weekly and monthly basis; and
- b) ensure that each vehicle is driven for a minimum of 50 miles at cruising speed twice weekly to avoid DPF (diesel particulate filter) blockages. Any breakdowns caused by DPF will be your responsibility (including the costs of any vehicle recovery) and will not be regarded as an Admissible Breakdown As such, vehicles cannot be used as a static security option.

- 4.6 Where the Equipment (including vehicles) has a toilet facility, COSHH Store, drum store or drip tray, you are solely responsible for the lawful and safe discharge and disposal of all waste (including chemical waste) during and before the end of the Hire Period, which for the avoidance of doubt shall be classified as trade waste. You are solely responsible for obtaining and maintaining all necessary licences, consents and authorisations relating to the discharge and disposal of all such waste.
- 4.7 Where the Equipment is hired with potable water, you are responsible for testing and servicing the Equipment in compliance with any legislation, regulation or code of practice in relation to the prevention and control of legionella bacteria and legionnaire's disease.
- 4.8 Where the Equipment comprises electrical equipment (in part or in whole) the same should only be used with plugs and/or sockets as fitted but if temporarily replaced with other suitable plugs or sockets it shall be your responsibility to ensure that this is carried out by a qualified electrician, who must also reinstate the Equipment to its original condition on the expiry of the Hire Period. Under no circumstances should electrical Equipment be used without it being correctly earthed unless it is of double insulated construction. Such electrical equipment must be connected by a qualified electrician to an adequate electrical supply of the correct voltage, and any mains connections, and Earth Loop Impedance are to be performed at your cost by a suitably qualified electrical engineer.
- 4.9 Where the Equipment (except vehicles) has been in your possession for a period in excess of the recommended service interval for that item, howsoever that interval is expressed (including but not limited to hours and time) it is your responsibility of the Customer to inform us of the need for the Equipment to be serviced and the location of the Site so that we can arrange to attend the Site and service the Equipment. If you fail to inform us of the need for the Equipment to be serviced or you prevent us from accessing the Site to service the Equipment, you shall be liable to us for any claim howsoever arising as a result of your continued use of the Equipment beyond the recommended service interval.
- 4.10 You acknowledge that we shall have no liability for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by you or your Customer Representatives.
- 4.11 You shall be liable for all costs and expenses involved arising from any breakdown or damage which is not an Admissible Breakdown and for the payment of hire charges during any period in which the Equipment is necessarily idle and unavailable due to such breakdowns or damage.

5. INDEMNITY

You shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties

and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with any of the following matters:

- 5.1 any failure by you to comply with these Conditions;
- 5.2 any claim made against us for injury to persons or loss of or damage to property during loading or unloading of the Equipment;
- 5.3 any claim made against us for injury to persons or loss of or damage to property caused by or in connection with:
 - a) any failure by you to comply with these Conditions;
 - b) your use and operation of the Equipment, including any parking fines, excess charges incurred under the Road Traffic Regulations Act 1984, any liability arising under any applicable Congestion Charge Order, any breach of any legislation or regulations covering vehicle excise, fire and/or health & safety regulation and any liability, fines or charges made by HM Revenue & Customs as a result of seizure of the Equipment and/or the incorrect use of rebated fuel;
 - c) the loss or theft of such personal property, items and goods;
- 5.4 any failure by you during the Hire Period to maintain or operate the Equipment in a safe and proper manner, including using wrong or contaminated fuel or fuel additives (including any incorrect use of rebated fuel) or not maintaining the Equipment with the correct level, type and grade of fuel, oil or grease; and
- 5.5 negligence, misdirection, or misuse of the Equipment during the Hire Period whether by you or other persons.

6. OUR RESPONSIBILITIES

- 6.1 We will not, other than in the exercise of our rights under the Contract or applicable law, interfere with your quiet possession of the Equipment.
- 6.2 We will provide the statutory minimum PPE requirements as required by applicable law. If you require any further PPE, we may provide this on request subject to an additional charge applying.
- 6.3 We will, at our own cost, carry out all preventative maintenance and repairs to the Equipment during the Hire Period and all repairs which are required due to fair wear and tear (which shall not include corrosive or erosive damage to the Equipment).
- 6.4 Unless an exception in Condition 6.5 of this Part 2 applies, provided that you:
 - a) Notify us immediately of any material inherent fault or a material fault not ascertainable by reasonable examination ("Admissible Breakdown");
 - b) Confirm the suspected Admissible Breakdown in writing to us within three days; and
 - c) Give us a reasonable opportunity to examine the Equipment concerned; and
 - d) You have complied with these Conditions, we will, at our option, repair or replace the Equipment concerned.
- 6.5 Any breakdown, fault or defect in the Equipment will not be regarded as an Admissible Breakdown if:
 - a) you make any further use of the Equipment after notifying us of the breakdown, defect or unsatisfactory working of the Equipment;
 - b) the breakdown, defect or unsatisfactory working of the

Equipment arises because you failed to follow the oral or written instructions provided by us or the manufacturer as to the storage, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice being generally accepted practice within your relevant industry with respect to the storage, installation, commissioning, use or maintenance of items that are the same as or similar to the Equipment;

- c) you alter or repair the Equipment without our written consent; or
 - d) the breakdown, defect or unsatisfactory working of the Equipment arises because of wilful damage, negligence, or abnormal working conditions.
- 6.6 We will use reasonable endeavours to investigate, deal and assist with necessary repairs or replacements for alleged Admissible Breakdowns as quickly as is reasonably possible and in accordance with these Conditions or any applicable warranty or guarantee relating to the Equipment concerned. For the avoidance of doubt, all decisions in relation to Admissible Breakdowns shall be at our sole discretion.
- 6.7 Reasonable allowance for the hire charges and for the reasonable cost of repairs that have been expressly authorised by us in writing, will be made to you for any stoppage due to an Admissible Breakdown. Any such allowances will apply from the date and time that we receive notice of the Admissible Breakdown as required under Condition 6.1 of this Part 2 above.

7. LOST, DAMAGED, NON-RETURNED OR UNCLEAN EQUIPMENT

- 7.1 During the Hire Period you are responsible for all loss or theft of or damage to the Equipment which is not an Admissible Breakdown from whatever cause the same may arise (including any damage caused to tyres and inner tubes including punctures and breakages to windows and windscreens and any corrosive or erosive damage), fair wear and tear excepted.
- 7.2 If the Equipment is lost or stolen or damaged beyond economic repair (that is if the repair would cost more than the Equipment is worth) where such damage is not an Admissible Breakdown:
- a) You must pay to us the cost of replacing such Equipment;
 - b) Hire charges shall continue to be payable by you until such Equipment has been repaired or replaced (at your cost);
 - c) The Hire Period will be deemed to end when you pay to us our invoiced charges for such loss, theft or damage of the Equipment (such charges will be based on current replacement values on a new for old basis); and
 - d) You are liable for all costs we may incur in recovering any lost or stolen Equipment.
 - e) Equipment which is returned to us and which we deem to be damaged or returned in an unclean or unsatisfactory condition will be held by us for your inspection for 5 (five) Business Days from us giving you notice of the same. After the expiration of the fifth Business Day we will carry out all necessary repairs, servicing or cleaning and you agree to pay to us, on demand, all costs and expenses we incur in rectifying the condition of the Equipment. Hire charges

will continue to be payable by you until such rectification is complete. Leads cut or damaged will be charged to the Customer at Garic's current list prices (as amended by Garic from time to time).

8. HIRE CHARGES AND PAYMENT TERMS

- 8.1 Subject to our standard minimum periods of hire as set out in Condition 1.3 of this Part 2, unless stated otherwise in our price list or quotation, or otherwise agreed under a Customer Agreement, all hire charges are calculated on a percentage of the weekly hire rate.
- 8.2 Equipment is hired is subject to a maximum use of 40 (forty) hours per week in respect of any Equipment with a generator product, and/or 100 (one hundred) miles per day / 500 (five hundred) miles per week in respect of the hire of a vehicle. Excess charges will apply in respect of any use over these maximum uses.
- 8.3 Unless otherwise agreed under a Customer Agreement, or we otherwise agree in writing, we shall invoice you for all hire charges monthly in arrears. The due date for payment shall be the date of our invoice, and the final date for payment shall be 30 (thirty) days from the due date.
- 8.4 You shall pay all sums due to us under the Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 8.5 Time for payment under a Contract shall be of the essence. Payment is not deemed to have been made until we have received cash or cleared funds in respect of the full sum outstanding.
- 8.6 We shall be entitled to charge you interest in relation to any late payment (unless you have given notice under Condition 7.5 of this Part 2) at the rate of 8% above HSBC Bank Plc base rate until payment in full is made. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay interest together with the overdue amount and our reasonable expenses in recovering money or the Equipment from you.
- 8.7 All invoice queries must be notified in writing to our Head Office. In the event that you intend to pay less than the sum notified by us on each payment application, you must notify us of the sum that you consider due (and the basis of your calculation of the sum due) no later than 9 (nine) days prior to the final date for payment. If the pay less notice is not received by us by this date you will pay the sum notified on the invoice on or before the final date for payment.
- 8.8 Unless we have agreed with you under a Customer Agreement fixed pricing for a specified period, we shall be entitled to adjust the hire charge rates and the delivery/ collection charges for any item of Equipment with effect from 1 January of each year. We will give you not less than 7 (seven) days written notice of any such adjustments to the Customer.
- 8.9 Unless stated otherwise in the Order Confirmation, where the Equipment is modular buildings, the hire charges do not include the following (which if provided by us will be charged to you as an additional sum):
- a) installation outside of a Working Day or Working Week;

- b) additional earthing, using earthing clamps or other methods of lighting conductivity;
- c) IT /Telecom points and cabling, fire alarm and emergency lighting, furniture, nor the supply and installation of air conditioning systems;
- d) any specialist requirements with regards to roof work / working at height by us. Whilst working at height our methodology is to attach to the off-loading crane via inertia, lanyard and harness and access the roof via footed ladder. Should this method of roof work not be permitted it is at your cost to provide other means of access;
- e) any site specific lifting plan, when using a Hiab system of installation or dismantling the Equipment; or
- f) any annual electricity testing and inspection.

PART 3

PROVISIONS THAT APPLY TO CONTRACTS FOR THE SALE OF EQUIPMENT AND FOR THE SUPPLY OF SERVICES

1. EQUIPMENT

We shall sell the Equipment and carry out the Services (if applicable) and you shall purchase the

Equipment and the Services (if applicable) in accordance with the Contract.

2. ORDER AND SPECIFICATIONS

- 2.1 The Equipment and the Services where applicable shall be supplied in accordance with the description, specifications, quantity and quality set out in Garic's Order Confirmation.
- 2.2 Where any specifications, patterns, drawings, photographs, samples, designs and information relating to the Equipment and the Services have been provided by you the Intellectual Property Rights in them shall remain your property (or your licensor's) however you grant to (or shall procure for) us an irrevocable, royalty-free licence to use the same (such licence may be sub-licensed by us without consent).
- 2.3 Where the Equipment is to be manufactured, assembled, supplied or any process is to be applied to the Equipment by us, or Services provided by us, in accordance with any specifications, patterns, drawings, photographs, samples, designs and information supplied by you ("Customer Materials"), you warrant that the use of the Customer Materials shall not infringe the Intellectual Property Rights or any other rights of any third party and you shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with any claim made against us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with our use of the Customer Materials and you undertake that:
 - a) if requested, we are given full control of any proceedings or negotiations in connection with any such claim;
 - b) you shall give us all reasonable assistance for the purpose of

any such proceedings or negotiations;

- c) except pursuant to a final award, you shall not pay or accept any such claim, or compromise any such proceedings without our consent in writing (which shall not be unreasonably withheld);
- d) you shall do nothing which would or might vitiate any policy of insurance or insurance cover which you may have in relation to such infringement;
- e) we shall be entitled to the benefit of, and you shall accordingly account to us for, all damages and costs (if any) awarded in your favour which are payable by you or agreed with your consent in writing (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim.

2.4 We reserve the right from time to time and in our absolute discretion to make any changes in the specification of the Equipment and the Services (where applicable) which are required to comply with any applicable safety or other statutory requirement or which does not materially affect the quality or fitness for purpose of the Equipment or the Services (to be determined at our discretion).

2.5 No Order which has been accepted by us may be cancelled by you except with our agreement in writing and on terms that:

- a) if cancelled more than 7 days before delivery then you will pay to us the reasonable costs incurred by us to the date of cancellation including but not limited to costs committed to a third party which we are unable to cancel; or
- b) if cancelled less than 7 days before delivery then you shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with the cancellation by you.

2.6 We may cancel the Contract at any time before the Equipment is delivered or Services performed by giving notice to you in writing. We shall have no liability to you whatsoever or howsoever arising from such cancellation, except for refunding to you any payment of the price already paid by you (less any costs or expenses incurred by us up to the point of cancellation).

3. PRICE OF THE EQUIPMENT/SERVICES

- 3.1 Unless otherwise agreed under a Customer Agreement, the price of the Equipment and the Services (where applicable) shall be our quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in our published price list current at the date of acceptance of the Order.
- 3.2 We reserve the right, by giving notice to you at any time before delivery, to increase the price of the Equipment and the Services (where applicable) to reflect any increase in the cost to us which is due to any factor beyond our reasonable control including:
 - a) foreign exchange fluctuations, currency regulations, taxes and duties;
 - b) the cost of labour, materials and other manufacturing costs;

- c) any change in delivery dates, quantities or specifications for the Equipment and the Services (where applicable) which is requested by you; and
 - d) any delay caused by any instructions from you or your failure to give us adequate or timely information or instructions.
- 3.3 Except as otherwise stated under the terms of our quotation or in any price list of ours, and unless otherwise agreed in writing between you and us (including under a Customer Agreement), all prices are given by us on an ex works basis, and where we agree to deliver (or arrange the delivery of) the Equipment other than at our premises you shall be liable to pay our charges for transport, craneage, packaging and insurance which shall be invoiced to you.

4. TERMS OF PAYMENT

- 4.1 Subject to any special terms agreed in writing between you and us (including under a Customer Agreement), we shall be entitled to invoice you for the price of Equipment and/or the Services prior to Delivery.
- 4.2 Unless otherwise agreed under a Customer Agreement, the due date for payment shall be the date of our invoice, and shall be paid in accordance with any milestones agreed. The final date for payment shall be 30 (thirty) days from the due date. Receipts for payment will be issued only upon request.
- 4.3 If you fail to make any payment on the due date (and you have not given notice under Condition
- 4.5 of this Part 3) then, without prejudice to any other right or remedy available to us, we shall be entitled to:
- a) cancel the Contract for the supply of the Equipment and/or Services, or suspend any further deliveries of the Equipment, or further provision of Services, to you;
 - b) appropriate any payment made by you for such of the Equipment or Services (or the Equipment supplied under any other contract between you and us) as we may think fit (notwithstanding any purported appropriation by you); and
 - c) charge you interest in relation to any late payment (unless you have given notice under Condition

4.5 of this Part 3) at the rate of 8% above HSBC Bank Plc base rate until payment in full is made. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay interest together with the overdue amount and our reasonable expenses in recovering money or the Equipment from you.

4.4 You may not withhold payment of any invoice or other amount due to us by reason of any right of set off or counterclaim which you may have or allege to have for any reason whatsoever under this Contract or any other agreement between you and us.

4.5 All invoice queries must be notified in writing to our Head Office. In the event that you intend to pay less than the sum notified by us on each payment application, you must notify us of the sum that you consider due (and the basis of your calculation of the sum due) no later than 9 (nine) days prior to the final date for payment. If the pay less notice is not received by us by this date you will pay the sum notified on the invoice on or before the final date for payment.

5. DELIVERY OF EQUIPMENT

- 5.1 Delivery of the Equipment shall be made at the location set out in the Order Confirmation.
- 5.2 Unless otherwise agreed in writing, delivery of the Equipment shall be completed when the Equipment is made available to you for unloading at the delivery location.
- 5.3 Any dates quoted by us for delivery of the Equipment are estimates only and we shall have no liability for any loss or damage whatsoever due to any failure to deliver the Equipment (or any of them) promptly or at all. Time for delivery shall not be of the essence.
- 5.4 We reserve the right to deliver the Equipment in advance of the quoted delivery date upon giving reasonable notice to you.
- 5.5 We may deliver the Equipment by separate instalments and each separate instalment shall constitute a separate contract and shall be invoiced and paid for in accordance with these Conditions. Our failure to deliver any one or more of the instalments shall not entitle you to treat the whole Contract as repudiated.
- 5.6 Notwithstanding any other provision of these Conditions any failure by you to pay for any one or more of the said instalments of the Equipment on the due dates shall entitle us (at our absolute discretion) without notice to suspend further deliveries of the Equipment pending payment by you and/or to treat the Contract as repudiated by you.
- 5.7 If you fail to take delivery of the Equipment at the time stated for delivery (otherwise than by reason of any cause beyond your reasonable control or by reason of our default) then, without prejudice to any other right or remedy available to us, we may:
- a) store the Equipment until actual delivery and charge you for all reasonable costs (including insurance) of storage; or
 - b) sell the Equipment at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to you for the excess over the price paid under the Contract or charge you for any shortfall below the price under the Contract.
- 5.8 If we fail to deliver the Equipment and (where applicable) to carry out the Services for any reason other than any cause beyond our reasonable control or your fault or failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment and/or Services and we are liable to you for a breach of these Conditions, your remedies shall be limited to refunding to you the price paid by you for the Equipment and/or Services (or a proportionate part of the price paid), but we shall have no further liability to you.

6. RISK AND TITLE

- 6.1 The Equipment shall be at your risk from completion of delivery.
- 6.2 Notwithstanding delivery and the passing of risk in the Equipment, or any other provision of these Conditions, title in the Equipment shall not pass to you until the later of (i) delivery; or (ii) we have received in cash or cleared funds payment in full of the price of the Equipment and all other Equipment agreed to be sold by us to you for which payment

is then due and until there are no other sums whatever due from you to us under the Contract.

- 6.3 Until such time as the title in the Equipment passes to you, you shall:
- hold the Equipment and each of them on a fiduciary basis as bailee for us;
 - store the Equipment (at no cost to us) separately from all other equipment in your possession and marked in such a way that they are clearly identified as our property;
 - maintain the Equipment in satisfactory condition;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
 - notify us immediately if you becomes subject to any of the events listed in Condition 10.1 of this Part 3;
 - give us such information relating to the Equipment and your ongoing financial position as we may require from time to time.
- 6.4 Notwithstanding that the Equipment (or any of it) remains our property you may sell or use the Equipment in the ordinary course of your business (but not otherwise) at full market value for our account. Any such sale or dealing shall be a sale or use of our property by you on your own behalf and you shall deal as principal when making such sales or dealings. Until title in the Equipment passes from us the entire proceeds of sale or otherwise of the Equipment shall be held in trust for us and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as our money.
- 6.5 We shall be entitled to recover the price (plus VAT) notwithstanding that title in any of the Equipment has not passed from us.
- 6.6 Until such time as title in the Equipment passes from us, you shall immediately upon request deliver up to us such of the Equipment as have not ceased to be in existence or resold. If you fail to do so we may enter upon any premises owned, occupied or controlled by you where the Equipment is situated and repossess the Equipment. On the making of such request your rights under Condition
- 6.4 of this Part 3 shall cease.
- 6.7 You shall not pledge or in any way charge by way of security for any indebtedness any of the Equipment which is our property. Without prejudice to our other rights, if you do so all sums whatever owing by you to us shall immediately become due and payable.
- 6.8 You shall insure and keep insured the Equipment to the full price against all risks to our reasonable satisfaction until the date that title in the Equipment passes from us, and you shall whenever we request produce a copy of the policy of insurance. Without prejudice to our other rights, if you fail to do so, all sums whatever owing by you to us shall immediately become due and payable.

7. ACCEPTANCE

- 7.1 You shall be deemed to have accepted the Equipment on delivery of the Equipment to you in accordance with these Conditions.

- 7.2 After acceptance you shall not be entitled to reject the Equipment which is not in accordance with the Contract and where you accept or are deemed to have accepted any of the Equipment then we shall have no liability whatever to you in respect of any of the Equipment, except for a breach of the warranty contained under Condition 9.1 of this Part 3.
- 7.3 Acceptance of the Equipment shall be deemed to be conclusive evidence of your acceptance of these Conditions.
- 7.4 None of the Equipment delivered to you which is in accordance with the Contract will be accepted for return without our prior approval in writing on terms to be determined at our absolute discretion.
- 7.5 If we agree to accept any of the Equipment for return you shall be liable to pay a handling charge of not less than 10% of the invoice price of the Equipment or such lesser handling charge as we may at its absolute discretion decide and which shall be notified in writing to you. Any such Equipment must be returned by you, carriage paid and at your risk, to us in its original packaging and condition.
- 7.6 Any of the Equipment returned without our prior approval in writing may at our absolute discretion be returned to you or stored at your cost without prejudice to any other rights or remedies we may have.
- 7.7 If you properly reject any of the Equipment which is not in accordance with the Contract you shall nonetheless pay the full price for any such Equipment unless you promptly give notice of rejection to us and at your cost return any such Equipment to us within 3 (three) days of delivery of the Equipment.

8. SUPPLY OF SERVICES

- 8.1 We shall use all reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.2 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event.
- 8.3 You may with a minimum of 24 hours' notice request the cancellation or re-arrangement of the agreed performance date. Any such cancellation is subject to our agreement and we shall be entitled to charge you 50% of the Services charge if:
- less than 24 hours' notice of cancellation/re-arrangement is given by you; or
 - individuals whom we engage on the Services are available to perform the Services at the Site at the time arranged but are unable to do so due to any cause beyond our reasonable control or your act or omission.
- 8.4 We shall be entitled to charge you for any expenses reasonably incurred by the individuals whom we engage in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties for the performance of the Services, and for the cost of any materials.

8.5 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by you) shall be owned by us.

9. WARRANTIES AND LIABILITY

9.1 Subject to the Conditions and limitations set out in these Conditions we warrant that:

- a) the Equipment will correspond in all material respects with their specification at the time of delivery and will be free from material defects in design, material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the earlier;
- b) the Services will be provided using reasonable care and skill.

9.2 The above warranty is given by us subject to the following conditions:

- a) We shall be under no liability in respect of any defect in the Equipment or the Services arising from:
 - i. any drawing, design or specification supplied by you;
 - ii. (whether direct or indirect) any preparatory work carried out by you in anticipation of the Equipment and/or Services;
 - iii. fair wear and tear, wilful damage, negligence, or abnormal working or ground conditions;
 - iv. failure to follow our or the manufacturer's instructions whichever is appropriate (whether oral or in writing);
 - v. inaccurate or incomplete information given by you;
 - vi. misuse or alteration or repair of the Equipment without our prior written approval.
- b) We shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if:
 - i. you continue to use the Equipment after notifying us of the alleged defect (at all times as determined by us);
 - ii. the total price for the Equipment and the Services (where applicable) has not been paid by the due date for payment;
 - iii. the Equipment and/or Services (where applicable) differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.3 The above warranty does not extend to parts, materials or equipment not manufactured by us, in respect of which to the extent that the benefit of any warranties made by the manufacturer can be assigned to you, we shall, if requested by you and at your cost, assign them to you. Until such assignment, we will co-operate with you in any reasonable arrangements to provide you with the benefit of such warranties or like conditions including enforcement at your cost of and for your benefit.

9.4 All terms, conditions and warranties (whether implied or made expressly) whether by us or our servants or agents or otherwise (other than those express warranties set out in these Conditions) relating to the Equipment and/or Services, and without prejudice to the generality of the foregoing of any terms, conditions, warranties relating to fitness for purpose, merchantability or condition of the Equipment and/or Services, and whether implied by statute common law or otherwise, are excluded to the fullest extent permitted by law.

9.5 Any claim by you which is based on any defect in the quality or condition of the Equipment and (where applicable) the provision of the Services or their failure to correspond with specifications must (whether or not delivery is refused by you) be notified to us within 3 (three) days from the date of delivery or in the case of defective workmanship in respect of the Services, within 3 (three) days of the completion of the same or (where the defect or failure was not apparent on reasonable inspection) within 3 (three) days of the defect or failure becoming apparent to you, or when it ought to have been apparent to you. If delivery is not refused, and you do not notify us accordingly, you shall not be entitled to reject the Equipment and/or Services and we shall have no liability for such defect or failure, and you shall be bound to pay the price as if the Equipment and Services had been delivered and carried out in accordance with the Contract.

9.6 Where any valid warranty claim in respect of any of the Equipment or Services is notified to us in accordance with these Conditions, we shall be entitled to inspect the Equipment or the Services on reasonable notice and to repair or replace the Equipment (or the part in question) and/or rectify the Services free of charge or, at our sole discretion, refund to you the price paid by you for the Equipment and/or Services (or a proportionate part of the price paid) and collect the Equipment, but we shall have no further liability to you.

9.7 INDEMNITY

You shall indemnify us, our employees, agents and servants against all loss, damage, claims, expenses and costs (including legal costs and not being limited to financial loss) whatsoever and howsoever arising whether directly or indirectly out of or in connection with any breach by you of any of its obligations under the Contract or in connection with the supply of the Equipment and the Services or their use or resale by you.

10. TERMINATION

10.1 Without affecting any other right or remedy available to us, we may at any time terminate the Contract or suspend any further deliveries under the Contract, without any liability to you, immediately by giving you notice if:

- a) You fail to pay any sum due to us by the final date for payment and you still do not make payment within 14 days of our reminding you that payment is due; or
- b) You are in breach of any of your obligations under the Contract; or
- c) You take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- d) We reasonably suspect that any of the events mentioned above is about to occur and we notify you accordingly; or
- e) You suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of your business; or
- f) Your financial position deteriorates so far as to reasonably

justify the opinion that your ability to give effect to the terms of the Contract is in jeopardy.

10.2 On termination of the Contract:

- a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services and Equipment supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt; and
- b) if the Equipment have been delivered and the Services carried out but not paid for, the price of the Equipment and the Services and all other sums whatever due to us under the Contract and these Conditions shall become immediately due and payable notwithstanding any previous agreement or arrangement.

10.3 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.



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