

TRAD UK GENERAL TERMS & CONDITIONS FOR THE HIRE OF EQUIPMENT AND THE SALE OF GOODS

General Terms & Conditions to be combined with (1) Schedule 1: Terms of Hire for Optional On-Site Delivery or Collection; or (2) Schedule 2: Terms of Sale

WARNING: These Terms & Conditions contain exclusion clauses and clauses which purport to limit liability. The Customer's attention is drawn in particular to the provisions of clause 7.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions shall apply:

Agreement means the agreement between the Supplier and the Customer for the hire of Equipment and/or the sale of Goods in accordance with: (i) these Conditions; and (ii) either Schedule 1 or Schedule 2; and (iii) the Agreement Documentation;

Agreement Documentation means any document incorporated into the Agreement by reference including, where applicable, a quotation, Delivery Note, Handover Certificate, credit account application or form, Specifications and these Conditions, and any other applicable document incorporated by reference;

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

Conditions means the terms and conditions set out in this document as amended from time to time in accordance with **clause 11.10**;

Customer means the person or firm who hires the Equipment or purchases the Goods from the Supplier and includes the Customer's servants or agents, and any subcontractor's servants or agents and the Customer's successors or personal representatives;

Delivery means the transfer of physical possession of the Goods or the Equipment to the Customer either by delivery to the Site or collection from the Supplier's premises by the Customer in accordance with **clause 5** and "**Delivery Date**" shall be the date of Delivery and "Deliver(ed)" shall be construed accordingly;

Delivery Note means the document which sets out the Customer's details (including applicable reference numbers) and where applicable the Goods to be sold and/or the Equipment to be hired (including in each case applicable product codes or references), the estimated Delivery Date of the Goods and/or Equipment and the location where the Goods and/or Equipment are to be Delivered;

Deposit means the deposit amount specified by the Supplier and notified to the Customer which is payable by the Customer in full, in cash or cleared funds prior to the Delivery Date;

Equipment includes but is not limited to scaffolding materials, tubes and fittings, boards, ladders, systems, safety products or any part of them belonging to the Supplier and made available for hire by the Supplier to the Customer as set out or referred to in the Agreement Documentation.

Ex-Hire Goods means Equipment that the Customer has hired from the Supplier which the Customer later wishes to purchase from the Supplier under these Conditions;

Force Majeure Event has the meaning given in **clause 9**;

Goods means the scaffolding materials, tubes and fittings, boards, ladders, systems, or any part of them, and any Ex-Hire Goods or Second Hand Goods to be sold by the Supplier to the Customer as set out or referred to in the Agreement Documentation;

Handover Certificate means the document which sets out the Customer's details, location where the Goods or Equipment are to be erected and used, details of the structure to be erected and the materials to be used on Site and other relevant information and acknowledgements as set out in **clause 6.4** or as may otherwise be required by the Supplier from time to time;

Hire Charges means the payments required to be made by or on behalf of the Customer for the hire of the Equipment, as specified in the Agreement Documentation;

Hire Period means the period of hire of the Equipment which shall be no less than the Minimum Hire Period and may be extended by the agreement of the parties;

Hire Termination Date means the date the Equipment is returned to the Supplier;

Minimum Hire Period means a week (consisting of the inclusive period of seven consecutive days commencing on the Delivery Date) except for the hire of: (i) TRAD DECK Safety Decking System and associated products, where the minimum hire period means two weeks (consisting of the inclusive period of fourteen consecutive days commencing on the Delivery Date); and (ii) TRADGUARD Temporary Mesh Edge Protection System and associated products, where the minimum hire period means three weeks (consisting of the inclusive period of twenty one consecutive days commencing on the Delivery Date);

Order means the Customer's order from the Supplier for the hire of the Equipment or purchase of Goods, whether that order is in writing or verbal;

Second Hand Goods means Goods which have been used by third parties, prior to the sale to the Customer under these Conditions;

Site means: (i) the Customer's site or premises; or (ii) the site or premises from which the Customer is operating from time to time; or (iii) the site or premises at which the Goods and/or Equipment are to be Delivered, stored, installed and/or used, in each case as set out or referred to in the applicable Agreement Documentation or as otherwise agreed by the parties;

Specification means a written description of the Goods and/or Equipment, including: (i) any data-sheet that is agreed in writing by the Customer and the Supplier; and (ii) in respect of the hire and installation of Equipment, the deck requirements form, as set out or referred to in the applicable Agreement Documentation;

Supplier means TRAD Hire & Sales Limited (registered in England and Wales with company number 03491083) whose registered office is at Albion Road, Dartford, Kent DA1 5PZ (trading as TRAD UK);

Total Loss means due to the Customer's default the Equipment is lost, stolen, seized or confiscated or, in the Supplier's reasonable opinion, damaged beyond repair;

VAT means value added tax chargeable under the Value Added Tax Act 1994.

1.2 **Interpretation.** In these Conditions, 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 party 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 and 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 e-mails.
- 1.2.6 A reference to an/the Agreement or to any agreement or document referred to in these Conditions is a reference to the/an Agreement or such other agreement as varied or novated (in each case other than in breach of the provisions of this Agreement) from time to time.
- 1.2.7 A reference to a clause refers to a clause in the main body of these Conditions and a reference to a paragraph refers to a paragraph in a Schedule to these Conditions.

2. BASIS OF AGREEMENT

- 2.1 These Conditions (and any applicable Agreement Documentation) apply to the Agreement to the exclusion of any other terms that the Customer may seek to impose or incorporate (whether via or referenced in any Order or endorsed upon, Delivered with or contained in any documents of the Customer or otherwise) or which may be implied by trade, custom, practice or course of dealing ("**Competing Terms**"), in each case, whether before or after the date of acceptance of these Conditions, the Supplier and Customer hereby accept and agree that any and all of which Competing Terms shall be deemed to be ineffective and shall not form part of the Agreement or bind the parties and that these Conditions (and any applicable Agreement Documentation) supersede any such Competing Terms in their entirety.
- 2.2 Each Agreement duly entered into under these Conditions shall become a separate and severable contract for the supply of Goods or hire of Equipment between the parties.
- 2.3 The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.4 Any samples, drawings, descriptive matter, sales literature and/or advertising produced by or on behalf of the Supplier or any manufacturer and any illustrations contained in/on the Supplier's or any manufacturer's catalogues, websites and/or brochures are produced for the sole purpose of giving an approximate idea of the Goods or the Equipment described in them. Unless expressly agreed in writing by the Supplier, such materials shall not form part of the Agreement or have any contractual force (whether contained or referred to in any Agreement Documentation or otherwise).
- 2.5 The Order constitutes an offer by the Customer to hire the Equipment or purchase the Goods in accordance with these Conditions and any applicable Agreement Documentation.
- 2.6 The Order shall only be deemed to be accepted by the Supplier when the Supplier:
 - 2.6.1 issues the Delivery Note; or
 - 2.6.2 commences fulfilment of the Order; or

- 2.6.3 issues a written acceptance of the Order; or
 - 2.6.4 grants the Customer a credit facility in respect of such Order,
at which point the Agreement shall come into existence.
- 2.7 The Agreement 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 Supplier which is not set out in or explicitly incorporated into the Agreement.

3. AUTHORITY

The person entering into the Agreement with the Supplier on behalf of the Customer represents and warrants that he/she is duly authorised to enter into the Agreement on behalf of the Customer and to perform its obligations hereunder and agrees to indemnify the Supplier against all losses and costs that may be incurred by the Supplier if said person is in breach of this warranty.

4. QUOTATION

- 4.1 A quotation for any Goods and/or Equipment issued by Supplier shall not constitute an offer by the Supplier. Any quotation provided by the Supplier to the Customer is open to be approved by the Customer within 28 days from the date of such quotation, and is subject to the Supplier having materials available and receiving reasonable notice to commence fulfilment within 3 months of receipt of the Customer's Order.
- 4.2 The Supplier reserves the right to re-negotiate its prices should the scope, quantities, requirements and/or other details of the quotation change.
- 4.3 The Supplier reserves the right to increase the prices contained within a quotation after 28 days of the date of such quotation.
- 4.4 After the Agreement has come into effect, the Supplier may increase any price including that of Equipment already on hire on 28 days' notice in writing to the Customer.

5. DELIVERY AND COLLECTION

- 5.1 The Supplier shall Deliver the Goods and/or Equipment to the location that the parties may agree ("**Delivery Location**") or make the Goods or Equipment available for collection at the Supplier's premises by the Customer ("**Collection Point**") at any time after the Supplier notifies the Customer that the Goods or Equipment are ready. The Supplier shall use its reasonable efforts to keep to the estimated dates provided for Delivery, but the Supplier accepts no liability in case of failure or delay in doing so, unless an express guarantee in writing has been given by the Supplier to effect Delivery by a specified time. Where the Supplier has agreed to Deliver the Goods or the Equipment to the Delivery Location the Customer shall be responsible for the Supplier's costs incurred in the Delivery to include all carriage costs, insurance and any applicable sales taxes. Such costs may include any wasted journey or transport time reasonably incurred by the Supplier in attempting to comply with the specific or implied requirements of the Customer.
- 5.2 Delivery of the Goods and/or Equipment shall be completed:
 - 5.2.1 where the Supplier has agreed to Deliver the Goods or Equipment, on the arrival of the Goods or Equipment at the Delivery Location; and/or

- 5.2.2 where the Supplier and the Customer have agreed that the Customer shall collect the Goods or Equipment from the Collection Point, at the point the Customer commences loading the Goods or Equipment onto the Customer's vehicle.
- 5.3 Each Delivery of Goods or Equipment shall be accompanied by a dated Delivery Note.
- 5.4 The cost of pallets and containers will be charged to the Customer in addition to the price of the Goods (as set out in Schedule 2).
- 5.5 The Customer shall procure that a duly authorised representative of the Customer shall be present at the Delivery of the Goods or the Equipment. Acceptance of Delivery by such representatives shall constitute conclusive evidence that the Customer has examined the Goods or the Equipment and has found it/them to be in good condition, complete and fit in every way for the purpose for which it is intended (save for any latent defects not reasonably apparent on inspection). The Customer's duly authorised representative shall sign the Delivery Note as conclusive proof of Delivery and acceptance of the Goods or the Equipment set out in the Delivery Note and the Agreement Documentation unless the Customer notifies the Supplier in writing within 48 hours of Delivery of any discrepancy between the quantity of the Goods or the Equipment listed in the Delivery Note and the quantity of the Goods or the Equipment actually Delivered.
- 5.6 Where the Customer has elected to collect the Goods or Equipment, the Customer shall inspect the Goods or the Equipment once they have been loaded onto the Customer's vehicle, and shall sign the Delivery Note as conclusive proof of the receipt of the Goods or the Equipment set out in the Delivery Note and the Agreement Documentation.
- 5.7 Any dates estimated for Delivery are approximate only, and the time of Delivery is not of the essence.
- 5.8 If the Supplier fails to Deliver the Goods or Equipment, its liability shall be limited to the direct reasonable costs and expenses incurred by the Customer in: (1) obtaining replacement goods of a similar description and quality in the cheapest market available, less the price of the Goods or (2) hiring equipment of similar description and quality in the cheapest market available, less the Hire Charges of the Equipment. The Supplier shall have no liability for any failure to Deliver the Goods or Equipment to the extent that such failure is caused by a Force Majeure Event or as a result of the Customer's failure to provide the Supplier with adequate Delivery instructions or any other instructions or co-operation that is relevant to the supply of the Goods or the Equipment.
- 5.9 To facilitate Delivery the Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery to be carried out safely and expeditiously.
- 5.10 If the Customer fails to take Delivery of the Goods or the Equipment, then, except where such failure or delay is caused by a Force Majeure Event or caused by the Supplier's failure to comply with its obligations under the Agreement, the Supplier may at its sole discretion:
- 5.10.1 store the Goods or the Equipment until Delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
- 5.10.2 in respect of the Equipment, invoice the Customer for the Supplier's costs incurred in the Delivery to include all carriage costs and Hire Charges for no less than the Minimum Hire Period; or
- 5.10.3 in respect of the Goods, resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 5.11 The Customer shall not be entitled to reject the Goods or Equipment if the Supplier Delivers up to and including 5% more or less than the quantity of Goods or Equipment ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods or Equipment was Delivered.
- 5.12 Goods or Equipment will be deemed to be Delivered in conformity with the Agreement, unless the Customer notifies the Supplier in writing within 7 Business Days (or 3 calendar weeks in respect of Delivery outside the United Kingdom) of any defect. The Supplier shall be entitled to inspect the Goods or Equipment to verify the Order Delivered and if in its reasonable opinion it considers that the Goods or Equipment Delivered were incomplete, damaged or defective, the Supplier will in its sole discretion make good any shortfall or replace any Goods or Equipment damaged in transit and this shall be the sole liability of the Supplier.
- 5.13 The Supplier may Deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Agreement. Any delay in Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. INSTALLATION OF GOODS OR EQUIPMENT BY SUPPLIER

- 6.1 The parties may agree under an Order that the Supplier shall erect and/or dismantle the Goods or Equipment on Site, and in such circumstances the provisions of this clause 6 shall apply to the applicable Agreement. Where applicable, the Supplier will exercise its reasonable skill and care to ensure that the structure is soundly and adequately constructed for the purpose requested by the Customer and that when constructed it will comply with all applicable laws.
- 6.2 The Supplier undertakes to remedy at its own expense any defects in the installation drawn to its attention in writing by the Customer which have arisen from faulty erection by the Supplier or the use of defective Goods or Equipment by the Supplier and any other defects drawn to the attention of the Supplier.
- 6.3 The Customer shall comply with and use its best endeavours to cause its agents, employees and sub-contractors to comply with the safety requirements in **clause 6.13** and all other health and safety provisions which are to be observed by the Customer or such persons under the Agreement and applicable law including statutory safety regulations. The Customer will indemnify the Supplier against all losses, liabilities, claims, damages, costs and expenses of whatever nature incurred or suffered by the Supplier arising out of or in connection with any failure by the Customer to comply with clause 6.3 including in respect of any injury or death of any person or damage to any property or any loss or any injury or damage caused by or arising out of the misuse of the Goods or Equipment by any person (other than that caused by the Supplier or its employees, agents or subcontractors) or otherwise arising out of a breach of the Agreement by the Customer. The Customer acknowledges that adequate information about the use and safety of the Goods and Equipment is available and that it has acquainted (or will acquaint) itself with such information.
- 6.4 **Pre-delivery site meeting:** Prior to Delivery, authorised representatives of the Supplier and Customer shall attend a pre-delivery meeting (which may be held in-person or via a telephone or video conference call) to discuss practical arrangements for the Delivery and installation of the Goods or Equipment including the terms of the Handover Certificate as necessary. Upon Delivery, the Customer shall procure that the site manager (or other authorised representative of the Customer) will sign the Handover Certificate and Delivery Note as proof of Delivery and acceptance of full responsibility for the care and safekeeping of the Goods or Equipment and any loss or damage to the Supplier (as set out in these Conditions). The Customer agrees that the Customer's site manager (or other on-site

representative put forward by the Customer) shall have authority to sign the Handover Certificate and as applicable Delivery Note for and on behalf of the Customer.

6.5 Additions and alterations:

6.5.1 Any additions, alterations, adaptations or variations required to the structure will be carried out by the Supplier on receipt of written instructions from the Customer and at the Customer's expense and will be charged in accordance with the rates set out in the quotation and accepted by the Customer unless such rates are queried or rejected in writing within 7 days from the date of the invoice.

6.5.2 The Customer undertakes not to carry out or cause or permit to be carried out any alteration, adaptation, variation or addition to the structure or to interfere with it in any way except as provided for in the original quotation or other Agreement Documentation.

6.5.3 Any minor alterations to existing structures required by the Customer will be carried out by the Supplier at the daywork rate shown in the Agreement Documentation plus expenses and travel time. Where any work is carried out at such rate, the total number of hours booked, as show on the Supplier's daywork sheets will be chargeable at the rate shown in the Agreement Documentation.

6.6 Insurance. Unless otherwise provided in these Conditions, the Supplier will indemnify the Customer against all sums for which the Customer shall become liable in respect of compensation for bodily injury or death of any person or damage to any property caused by the negligence of the Supplier in erecting or dismantling the structure or by the use of defective Goods or Equipment by the Supplier. Provided that the Supplier shall be entitled to conduct and control (in the name of the Customer) of all claims of proceedings relating to such injury, death or damage and the Customer shall notify the Supplier in writing as soon as is reasonably practical after the Customer becomes aware of such claim but in any event no later than 36 hours after becoming aware of such claim. The Supplier has effected and undertakes to keep in force at all times policies of insurance in respect of its liabilities under this clause.

6.7 Disclaimer. The Supplier will not be liable to the Customer for damage to roofs, glass, external cladding, brick and blockwork and other external or internal finishes caused by or arising out of its work and the Customer shall indemnify the Supplier against all claims and proceedings and costs and expenses in connection therewith in respect of such damage unless (and to the extent) such damage is proved to be due to negligence on the part of the Supplier, its employees, subcontractors or agents.

6.8 Ownership. Any rights which the Customer's employer or client might otherwise possess under the terms of any agreement between the Customer and such employer over temporary buildings, plant, tools, structure, goods and materials on site shall not extend to effect the ownership of any items provided by the Supplier in carrying out the work, which items shall (as between the parties) remain the unencumbered property of the Supplier at all times. In the event of default in payment by the Customer under such agreement, the Customer shall, as far as it lawfully can, assist the Supplier to resume possession of the Supplier property.

6.9 Damage to Goods or Equipment. The Customer shall be responsible for and make good to the Supplier any loss of or damage to the Supplier structure (including where applicable Equipment on hire) whilst on the Site save to the extent caused by the negligence or wilful act or default of the Supplier or its employees, agents or subcontractors. The Customer shall pay in respect of any loss for which they are

so responsible at its current sale value and in respect of any damage for which they are so responsible the cost of repair.

- 6.10 **Working Hours.** Unless confirmed in writing by the Supplier, the quotation allows for the work to be executed during the normal working hours of the Supplier from time to time and is based upon the current rate of wages and other emoluments and expenses payable by the Supplier to or in respect of work people are engaged upon or in connection with the work together with the current prices of materials and transport charges ruling at the date of the quotation. Increases or decreases in these rates, prices or charges or upon any change in or imposition of any new Government taxes, levels of contributions in connecting with the work shall be in addition to or deduction from the price quoted, using such cost/inflation index published by a recognised government or industry body as the Supplier shall reasonably consider appropriate. The base date of the index being the date of the Supplier's original quotation.
- 6.11 **Programme Consents/Licences.** The Customer shall obtain and thereafter during the duration of the work maintain all consents, licences and/or permits required in connection with the work under any applicable law, statute, bylaw or regulations from time to time in force affecting the carrying out of the work under this clause 6, or from any third party, and shall produce to the Supplier particulars of all such consents, licences or permits before the commencement of the work. The Supplier reserves the right to revise its quotations if such consents, licences and/or permits impose conditions which involve additional expense to the Supplier. The Customer shall supply, fix and maintain any warning lamps, warning notices or other devices and take other measures that may be required under the provisions of any applicable law, statute, bylaw or regulation, or otherwise, during the Hire Period or the period during which the Supplier is engaged to install and/or dismantle the structure. If progress or completion of the work specified in the Agreement Documentation is delayed for any reason beyond the control of the Supplier, a fair and reasonable extension of time for executing or completing the work shall be granted to the Supplier and the Customer agrees to make appropriate payment to cover for added manpower and expenses incurred to achieve this.
- 6.12 **Welfare Facilities.** The Customer will provide without charge to the Supplier all facilities required for its own employees and other personnel and those of its agents and subcontractors under the Construction (Health & Welfare) Regulations 1996 as amended or any statutory modification or replacement thereof for the time being in force.
- 6.13 **Safety**
- 6.13.1 The Customer understands and accepts that the deck panels should not be moved after the initial placement and handover by the Supplier, however, it shall remain the responsibility of the Customer to ensure that the platform deck and supporting structure fully comply with all applicable law, statute, bylaw or regulations at all times.
- 6.13.2 The Customer shall ensure that the ground and/or base and external perimeter walls as provided for the restraint of the Supplier's safety deck system is adequate to support the loads to be applied without settlement.
- 6.13.3 All weekly statutory inspections and signature of report are to be carried out by the Customer (Duty Holder) or other competent person as deemed appropriate by the Customer in accordance with schedule 7 of the Work at Height Regulations 2005 and the Customer shall carry out all other safety inspections and checks as would be expected of a reasonably prudent user of the Goods and /or Equipment in accordance with good industry practice.

6.13.4 The provision of suitable and sufficient access and egress to the platform of the Supplier deck system remains the responsibility of the Customer.

7. CUSTOMER'S INSOLVENCY

7.1 If the Customer becomes subject to any of the events listed in **clause 7.2**, or the Supplier reasonably believes that the Customer is about to become subject to any of these events then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend the Agreement without incurring any liability to the Customer, and all outstanding sums in respect of Goods or Equipment Delivered to the Customer shall become immediately due and payable.

7.2 For the purposes of **clause 7.1**, the relevant events are:

7.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

7.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

7.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

7.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;

7.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

7.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

7.2.7 (being a company) enters into liquidation whether compulsory or voluntary (except liquidation for purpose of reconstruction or amalgamation) or allows the appointment of a receiver or provisional liquidator,

7.2.8 (being a company) the holder of a qualifying charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

7.2.9 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

- 7.2.10 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **clause 7.2.1-7.2.9** (inclusive);
- 7.2.11 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 7.2.12 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy;
- 7.2.13 the Customer suffers any distress or execution whether legal or equitable or any attempt upon any of the Customer's property or the Customer dis-honours any cheque drawn upon it; and
- 7.2.14 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 8.1.2 fraud or fraudulent misrepresentation;
- 8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 8.1.4 defective products under the Consumer Protection Act 1987; or
- 8.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

8.2 Subject to **clause 8.1**:

- 8.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill or any indirect, special or consequential loss arising under or in connection with the Agreement; and
- 8.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, shall in no circumstances exceed:
 - (a) the Hire Charges (in respect of liability arising in respect of the hire of Equipment);
or
 - (b) the price of the Goods (in respect of liability arising in respect of the sale and purchase of Goods), and where the Goods are Delivered in instalments the Supplier's total liability shall be capped at the price of the Goods Delivered under the instalment under which the liability arose.

- 8.3 The Conditions set out the full extent of the Supplier's obligations and liabilities in respect of the hire of Equipment and/or sale of Goods to the Customer. In particular, 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 Supplier, except as specifically stated in the Agreement. Any condition, warranty, or other term concerning the Goods and/or the Equipment which might otherwise be implied into or incorporated within the Agreement, whether by statute, common law or otherwise, is expressly excluded.

9. **FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event (save for the Customer's obligation to make payment under the Agreement which shall not be excused under this clause 9). A **"Force Majeure Event"** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, pandemics or similar events, natural disasters or extreme adverse weather conditions, default of suppliers or subcontractors, or any law or any action taken by a governmental or public authority including without limitation imposition of an export or import restriction, quota or prohibition.

10. **TERMINATION**

- 10.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:
- 10.1.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;
 - 10.1.2 the Customer commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
 - 10.1.3 the Customer repeatedly breaches any of the terms of this Agreement 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 this Agreement; or
 - 10.1.4 the Customer breaches any other agreement with the Supplier.
- 10.2 The Agreement will automatically terminate if a Total Loss occurs in relation to the hire of Equipment.
- 10.3 Termination of the Agreement, however arising, shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination. Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

11. GENERAL

11.1 Set-off, deduction or withholding payment

11.1.1 The Customer shall pay all amounts due under this Agreement in full without any set-off, deduction or withholding (other than by any deduction or withholding of tax as required by law).

11.1.2 The Supplier 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 Supplier to the Customer.

11.1.3 A counter-claim against the Supplier will only be accepted for deduction from any payment made to the Supplier where the Supplier has agreed to such a deduction in writing. Counter-claims will only be considered for acceptance between the parties to this Agreement. No amount which might be due for payment to an associate company or to the parent company of the Customer will be deemed to be acceptable as a counter-claim in this context.

11.2 Failure to make payment and interest.

If the Customer fails to make any payment due to the Supplier under this Agreement by the due date for payment then, without limiting the Supplier's remedies the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Customer shall pay the interest together with the overdue amount. This entitlement to interest shall be without prejudice to the Supplier's right to terminate any applicable hire by reason of non-payment.

11.3 Assignment and other dealings.

11.3.1 The Supplier 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 Agreement.

11.3.2 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 Agreement without the prior written consent of the Supplier, subject to **paragraphs 4.1.7 and 7** of Schedule 1.

11.4 Photography and Videography.

11.4.1 The Supplier may take photos and/or videos of its Goods or Equipment after Delivery to the Customer and, if applicable, during or after installing or dismantling any Goods or Equipment at the Customer's Site, for its own internal business and record keeping purposes.

11.4.2 The Supplier shall be permitted to take and use photographs and/or videos of the Goods or Equipment and the Supplier's activities at the Site for business purposes only, such as use in advertising, corporate brochures or on the Supplier's business website or social media content, subject to the following conditions:

- (a) the Supplier will be sensitive to personal data of the Customer, its employees, agents, sub-contractors or any visitors to the Site and the nature of the Supplier's engagement at the Site;

- (b) the Supplier shall not publish any photography and/or videos which may identify the Customer or its' employees, agents, sub-contractors or any visitors to the Site without prior agreement from the Customer and, where applicable, any individual(s) who are to be captured or subject of the photography and/or videos; and
- (c) the Customer has the right to withdraw its permission for future photography, videos and use of them under **clause 11.4.2** by providing written notice to the Supplier.

11.5 **Notices.**

- 11.5.1 Any notice or other communication given to a party under or in connection with the Agreement 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 Business Day delivery service, commercial courier, email, save where sending a notice of termination which shall be delivered personally or sent by post or courier.
- 11.5.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in **clause 11.5.1**; if sent by pre-paid first class post or other next Business Day delivery service, at 9.00am on the second 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 email, one Business Day after transmission.
- 11.5.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.6 **Severance.**

- 11.6.1 If any provision or part-provision of the Agreement 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 Agreement.
- 11.6.2 If any provision or part-provision of this Agreement 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.

11.7 **Waiver.** A waiver of any right or remedy under the Agreement 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 Agreement 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.

11.8 **Conflict:** In the event that there is an inconsistency between any provision of these Conditions and the Agreement Documentation, the provisions of these Conditions shall prevail.

- 11.9 **Third party rights.** A person who is not a party to the Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999.
- 11.10 **Variation.** Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 11.11 **Governing law.** The Agreement, 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.
- 11.12 **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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

TERMS OF HIRE AND OPTIONAL ON-SITE DELIVERY OR COLLECTION (TO BE READ IN CONJUNCTION WITH THE TRAD UK GENERAL TERMS & CONDITIONS)

1. HIRE PERIOD

- 1.1 The Supplier shall hire the Equipment to the Customer on and subject to the terms and conditions of the Agreement.
- 1.2 The Supplier shall not, other than in the exercise of its rights and performance of its obligations under this Agreement and applicable law, interfere with the Customer's quiet possession of the Equipment.
- 1.3 The Delivery Date of the Equipment will be the date of commencement of the Hire Charges and shall continue for no less than the Minimum Hire Period specified in the Delivery Note unless the Agreement is terminated earlier in accordance with its terms. Hire Charges are calculated weekly, fractions of a week being charged on a daily basis, the charge for one day being 1/7th of the weekly charge, except for each item where there is a different specified minimum hire period. The date of despatch and the date of Delivery shall be whole days. No allowance will be made for holiday periods or inclement weather or for any Force Majeure Event. The Supplier may at its sole discretion and subject to availability and at the request of the Customer, add, subtract or substitute to the Equipment let on hire without creating a modifying agreement within the meaning of the Consumer Rights Act 2015.

2. HIRE CHARGES AND DEPOSIT

- 2.1 The Customer shall pay the Hire Charges to the Supplier in accordance with the terms of this Agreement and any payment schedule agreed in the Delivery Note. The Hire Charges shall be paid in pounds sterling in cleared funds.
- 2.2 The Hire Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the matter from time to time prescribed by law.
- 2.3 All costs incurred by the Supplier in the specific preparation and gathering together of Equipment for hire to meet the Order, which will where appropriate, include the consequential loss of hire income, shall be recoverable by the Supplier in the event of the Customer cancelling the Agreement.
- 2.4 An authorised credit account will be granted at the Supplier's discretion where a level of credit approval has been granted by the Supplier and the Customer has agreed the Supplier's credit account terms and conditions. The continuation of credit facilities will be reviewed periodically. Where a Customer does not have an authorised credit account, before the Delivery Date begins the Customer shall pay the Hire Charge and the Deposit specified from time to time to be calculated in accordance with the Supplier's list prices ruling, which will be held as security until the return in good order of the Equipment hired and the payment of all sums due. If the Customer wishes to change the status of the account to any other legal identity than the one accepted by the Supplier such a change will only take effect if specifically authorised in writing by a director of the Supplier. The change of salutation to any documentation from the Supplier is specifically not an indication that the Supplier has accepted any change in the contractual relationship with the Customer.
- 2.5 Where the Customer has an authorised credit account, confirmation of which has been given in writing by the Supplier, payment will be due 30 days from the date of the invoice or as otherwise agreed by the Supplier in writing. If any sum remains unpaid after the due date the payment of all of the Hire Charges, no matter how recent, shall become due immediately. Invoices will be presented at regular

intervals during the Hire Period. The Supplier reserves the right to suspend further supplies from existing or any other Orders until all overdue debts have been discharged, since time for payment is of the essence.

- 2.6 The Deposit is a deposit against any loss of or damage caused to the Equipment. If the Customer causes any loss or damage to the Equipment (in whole or in part) the Supplier shall be entitled to apply the Deposit against such loss or damage. The Supplier may utilise the Deposit to off-set any Hire Charges which the Customer has not paid at the Hire Termination Date and shall notify the Customer of any shortfall in the outstanding Hire Charges after the Deposit has been utilised.
- 2.7 In the event that there is any Deposit remaining after the payment of any outstanding Hire Charges, the Supplier shall refund the balance within five Business Days, at the end of the Hire Period.
- 2.8 The Customer shall pay any shortfall in the Hire Charges after the Deposit has been deducted within 5 Business Days of the end of the Hire Period.
- 2.9 The Supplier shall be entitled to issue invoices monthly at the end of each month of the Hire Period or on completion of the Hire Period. The Customer shall be obliged to pay the amounts due under an invoice within 24 hours of receipt where it received the invoice on a Business Day. If the Customer received the invoice on a non-Business Day it shall pay the invoice on the Business day immediately following the date of receipt.

3. TITLE RISK AND INSURANCE

- 3.1 The Equipment shall at all times remain the property of the Supplier 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 Agreement).
- 3.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Customer until such time as the Equipment is returned to the Supplier.
- 3.3 During the Hire Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
- 3.3.1 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 Supplier may from time to time nominate in writing; and
- 3.3.2 insurance of such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and howsoever arising in connection with the Equipment.
- 3.4 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.
- 3.5 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

- 3.6 Should the Supplier sell its Ex-Hire Goods to the Customer that has been marked with the Supplier's security paint, it is the Customer's responsibility to remove all traces of the said paint and the sale is conditional upon the removal of such paint. Title to any sold Ex-Hire Goods does not pass to the Customer until traces of the paint have been removed and title to any Ex-Hire Goods bearing the paint remains with the Supplier whether or not the Ex-Hire Goods have been paid for.

4. CUSTOMER'S RESPONSIBILITIES

- 4.1 The Customer shall during the Hire Period:

- 4.1.1 ensure that the Equipment is kept in a suitable environment, used only for the purposes for which it is designed, and used in a proper manner by trained, experienced, qualified and competent personnel and contractors in accordance with any operating instructional material made available by or on behalf of the Supplier, the manufacturer or relevant industry body and otherwise in accordance with good industry practice;
- 4.1.2 take such steps (including compliance with all health and safety and usage instructions made available by or on behalf of the Supplier or the manufacturer or relevant industry body) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned and/or maintained by any person at work or otherwise;
- 4.1.3 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment;
- 4.1.4 immediately notify the Supplier in writing of any breakdown or unsatisfactory working of Equipment;
- 4.1.5 at all times keep the Equipment in the possession or control of the Customer;
- 4.1.6 permit the Supplier or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site and shall grant reasonable access and facilities for such inspection;
- 4.1.7 not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 4.1.8 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Equipment and shall ensure that any mark, paint or labelling on the Equipment which has been added by the Supplier to identify the Equipment as belonging to the Supplier is not defaced or removed and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Equipment both during the term of the Agreement 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 Supplier of any rights such person may have or acquire in the Equipment and a right for the Supplier to enter onto such land or building to remove the Equipment;
- 4.1.9 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 Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the

Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred by the Supplier as a result;

4.1.10 not use the Equipment for any unlawful purpose; and

4.1.11 not do or permit to be done anything which could invalidate the insurances referred to in **paragraph 3.3, 4.2 and 9** of this Schedule 1.

4.2 The Customer acknowledges that the Supplier shall not be responsible 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 the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Supplier 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 the terms of the Agreement, including any third party claims for death or personal injury or property damage. The Customer shall effect and keep in force at all times policies of insurance in respect of the Customer's liabilities under this **paragraph 4.2** of this Schedule 1.

4.3 All Equipment will be inspected on its return to the Supplier's premises. If following such inspection the Supplier in its reasonable opinion determines that any Equipment is damaged or unusable the Supplier shall be entitled to charge the Customer the cost of repair or replacement of such Equipment at the Supplier's standard rates, as specified from time to time. Prior to implementing the charge the Supplier shall inform the Customer of its opinion as to the damage of the Equipment and shall give the Customer 7 days during which it may inspect the Equipment to view the alleged damage. The Customer shall be entitled to comment on the damage to the Equipment but the Supplier's opinion as to the damage shall be final.

5. WARRANTY

5.1 Subject to **paragraph 5.2** of this Schedule 1, the Supplier warrants that the Equipment shall substantially conform to its Specification, be of satisfactory quality and fit for any purpose held out by the Supplier.

5.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Supplier, the Customer shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer and is permitted to pass on to the Customer.

5.3 If the Supplier fails to remedy any material defect in the Equipment in accordance with **clause 6.2** of the Conditions, the Supplier shall, at the Customer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Hire Charges payable during the remaining term of the Agreement.

6. RETURNS

6.1 The Customer agrees to return the Equipment to the Supplier's premises at the termination of the Hire Period. After the expiry of the Minimum Hire Period, the term of hire shall continue automatically until the Customer gives no less than 48 hours' notice in writing to the Supplier of its intention to terminate the Hire Period.

6.2 The Hire Period shall be deemed to have ended on the later of:

6.2.1 the expiry of such 48 hour notice period; or

- 6.2.2 the Customer returning the Equipment to the Supplier or requesting that the Supplier collects the Equipment (at the Customer's cost and expense) following the expiry or termination of the Hire Period and in each case obtaining an off-hire reference from the Supplier confirming the Supplier's acceptance of the termination of the Hire Period and the date by which the Equipment must be or has been returned.
- 6.3 All components of the Equipment are to be returned to the exact dimensions supplied in a clean and sound condition. Only Equipment identified by the Supplier as belonging to the Supplier will be accepted at the end of the Hire Period.
- 6.4 No returns of Equipment will be accepted on a day that is not a Business Day, or outside the normal office hours of the Supplier.
- 6.5 The Customer shall remain fully liable for all Hire Charges relating to the Equipment until the Equipment is returned to the Supplier and the Supplier has notified the Customer that the Equipment is off hire. Such costs may include any wasted journey or transport time reasonably incurred by the Supplier in attempting to comply with the specific or implied requirements of the Customer.
- 6.6 Accounting procedures for off-hire Equipment will take place after the return by the Customer of the Equipment to the Supplier's premises from which the Equipment was hired. Where the Supplier has agreed in advance with the Customer to collect the Equipment upon the agreed Hire Termination Date from the Site, as specified by the Customer, accounting procedures for off-hire Equipment collected will take place only after return to the Supplier's premises.
- 6.7 The Customer shall be liable for all associated carriage charges, including cost of carriage, any insurance, any other duties or applicable tax associated with the collection of the Equipment.
- 6.8 The Customer shall on the request of the Supplier confirm the location of the Equipment to the Supplier in writing within 1 Business Day of receipt of such request from the Supplier. The Supplier may in its sole discretion include an additional charge for the full replacement value of the Equipment should the Supplier have reason to consider that the Customer no longer has the Equipment in its possession or control and the Customer cannot demonstrate to the Supplier's reasonable satisfaction that the Equipment is in the Customer's possession or control.

7. SUPPLIER'S RIGHTS

Where the Customer takes the Equipment on hire intending to re-hire the Equipment to a third party (and the Supplier permits), the Customer is deemed to retain control of the Equipment whether or not it might remain in the Customer's possession. The Customer shall be solely responsible for the payment of all Hire Charges raised by the Supplier and for all charges raised by the Supplier in respect of damage to or loss of the Equipment or any other charge and/or payment under this Agreement. It is the sole responsibility of the Customer to return the Equipment to the Supplier. The Supplier will not deal directly with any third party in this context.

8. NON-RETURNED EQUIPMENT

- 8.1 The Customer accepts full responsibility for the care, safekeeping and return in good order of the Equipment, and shall at all times keep it in its possession or control until such time as the Supplier takes the Equipment back into the Supplier's own possession.
- 8.2 The Customer will pay to the Supplier all costs incurred by the Supplier in rectifying the condition of any Equipment returned damaged or unclean. Additionally the Customer will pay to the Supplier a

charge equating to the financial losses reasonably incurred by the Supplier including the consequential loss of hire income while such rectification is carried out.

- 8.3 The Customer shall notify the Supplier immediately upon the loss of any of the Equipment, howsoever arising, and shall be liable to pay the Hire Charges in respect of the lost Equipment up to and including the date on which notification of loss is received by the Supplier.
- 8.4 In the case of Equipment lost through theft, the Customer shall also report the loss immediately to the Police and as soon as reasonably practical thereafter obtain and advise the Supplier of the crime report number and other relevant information.
- 8.5 The Supplier reserves the right to continue to levy Hire Charges until any and all sums due under **paragraphs 8.1-8.4** (inclusive) of this Schedule 1 have been recovered from the Customer.

9. INSURANCE AND RESPONSIBILITY FOR LOST/STOLEN/DAMAGED EQUIPMENT

The Customer agrees to pay the Supplier the Supplier's standard full new list sale rate applicable from time to time for any Equipment which is lost or stolen or damaged beyond economic repair, and without any deduction for usage, wear and tear or age, and should insure the Equipment on this basis. In the event of loss or theft of or damage to the Equipment all monies owed to the Supplier under the Agreements shall be payable in full on demand and such payment shall not be conditional on prior recovery by the Customer of any sums under a policy of insurance or from any other source. Notwithstanding the preceding sentences of this paragraph 9, all monies received by the Customer from any policy of insurance or from any other source in settlement of any claim relating to the loss or theft of or damage to Equipment, shall, to the extent that any payment is due to the Supplier under this paragraph 9, be held on trust by the Customer (or its successor, nominee, or assigned body as applicable) for the Supplier until such payment to the Supplier has been discharged and paid to the Supplier on demand.

10. RECOVERY OF EQUIPMENT

The Customer will take all practical steps to secure a proper return of lost or stolen Equipment. In the event of lost or stolen Equipment being subsequently recovered and returned by the Customer to the Supplier, the Customer will be credited with the value of that Equipment less the appropriate Hire Charges from the date on which the Supplier received notification of loss to the date of return.

11. CONSEQUENCES OF TERMINATION OF HIRE

- 11.1 Upon termination of the Agreement in respect of the hire of Equipment, howsoever caused:
- 11.1.1 the Supplier's consent to the Customer's possession of the Equipment shall terminate and the Supplier may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
- 11.1.2 without prejudice to any other rights or remedies of the Supplier, the Supplier shall be entitled to charge and the Customer shall pay to the Supplier on demand:
- (a) all Hire Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to **clause 11.2** of the Conditions; and
- (b) any costs and expenses incurred by the Supplier in recovering the Equipment and/or in collecting any sums due under this Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

- 11.2 Upon termination of this Agreement for any reason, including where any repudiation of this Agreement by the Customer is accepted by the Supplier, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand a sum equal to the whole of the Hire Charges that would (but for the termination) have been payable if the Agreement had continued from the date of such demand to the end of the agreed Hire Period.
- 11.3 The sums payable pursuant to **paragraph 11.1.2(a)** of this Schedule 1 shall be agreed compensation for the Supplier's loss and shall be payable in addition to the sums payable pursuant to **paragraph 11.1.2(b)** of this Schedule 1. Such sums may be partly or wholly recovered from any Deposit.

SCHEDULE 2

TERMS OF SALE (TO BE READ IN CONJUNCTION WITH THE TRAD UK GENERAL TERMS & CONDITIONS)

1. SALE AND PURCHASE OF GOODS

- 1.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This **paragraph 1.1** of this Schedule 2 shall survive termination of the Agreement.
- 1.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory, regulatory or other legal requirements.
- 1.3 Where the Goods are to be supplied from existing stock of the Supplier, the Customer acknowledges that any such supply will be subject to availability of the Goods at the estimated Delivery Date. The Supplier shall have no liability to the Customer for any non-Delivery or failure to Deliver due to non-availability of Goods from stock items.
- 1.4 Ex-Hire Goods or Second Hand Goods are sold subject to **paragraph 5.2** of this Schedule 2 and without any specification or warranty. The Customer shall inspect such Ex-Hire Goods or Second Hand Goods prior to purchase and the Supplier shall have no liability for any defect in the Ex-Hire Goods or Second Hand Goods, save where the Customer identifies any broken items on such initial inspection prior to Delivery.

2. PRICE OF GOODS

- 2.1 Subject to **clause 4** of the Conditions, the price of the Goods shall be the price set out or referred to in the Agreement Documentation, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of Delivery. Prices quoted are ex-works unless otherwise stated by the Supplier.
- 2.2 The Supplier may, by giving written notice to the Customer at any time before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 2.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 2.2.2 any request by the Customer to change the requested Delivery Date(s), quantities or types of Goods ordered, or the Specification; or
 - 2.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 2.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 2.4 The price of the Goods is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

3. TITLE AND RISK

- 3.1 The risk in the Goods shall pass to the Customer on completion of Delivery.
- 3.2 Subject to **paragraph 3.5** of this Schedule 2, title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- 3.2.1 the Goods; and
- 3.2.2 any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 3.3 The Supplier may at any time after Delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the price of the Goods to the Supplier.
- 3.4 Until title to the Goods has passed to the Customer, the Customer shall:
- 3.4.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
- 3.4.2 store the Goods separately from all other goods held by the Customer (at the Customer's cost and expense) so that they remain readily identifiable as the Supplier's property;
- 3.4.3 not remove, deface or obscure any Supplier's identifying mark, paint, labelling or packaging on or relating to the Goods;
- 3.4.4 maintain the Goods in satisfactory condition and keep them insured (at the Customer's sole cost and expense) against all risks for their full price from the date of Delivery;
- 3.4.5 notify the Supplier immediately if the Customer becomes subject to any of the events listed in **clause 7.2** of the Conditions; and
- 3.4.6 give the Supplier such information (including documentary evidence regarding insurances required under **paragraph 3.4.4** of this Schedule 2) as the Supplier may require from time to time relating to the Goods and the ongoing financial position of the Customer.
- 3.5 Subject to **paragraph 3.6 and 3.7** of this Schedule 2, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) provided that the Supplier receives payment for the Goods in accordance with paragraph 3.2 of this Schedule 2 above.
- 3.6 If in breach of the terms of **paragraph 3.5** of this Schedule 2, the Customer resells the Goods before the Supplier receives payment for the Goods:
- 3.6.1 it does so as principal and not as the Supplier's agent;
- 3.6.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs;
- 3.6.3 the Customer shall immediately inform the Supplier that it has resold the Goods; and
- 3.6.4 the Customer shall provide the Supplier with all such information relating to the resale of the Goods as the Supplier may require from time to time (including the identity of the third party to whom the Goods have been resold and the price of the sale).
- 3.7 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into

another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

- 3.8 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in **clause 7.2** of the Conditions, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

4. PAYMENT TERMS

- 4.1 The Supplier may invoice the Customer for the Goods on or at any time after the completion of Delivery.

- 4.2 Where the Customer has an approved account, the Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice or as otherwise agreed with the Supplier in writing. Time for payment is of the essence.

- 4.3 All prices quoted will be deemed to be the Supplier's list prices unless agreed by the Supplier in writing. Any prices agreed which differ from the Supplier's list price will only remain applicable on the condition that the Customer complies with the agreed payment terms. In the event that the Customer does not comply with those payment terms, the Supplier reserves the right to charge to the Customer the full list price.

5. WARRANTY

- 5.1 The Supplier warrants that on Delivery, and, save for Ex-Hire Goods or Second Hand Goods, for a period of 3 months from the date of Delivery (the "**Warranty Period**"), the Goods shall:

5.1.1 conform in all material respects with its description and any applicable Specification;

5.1.2 be free from material defects in design, material and workmanship; and

5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

5.1.4 be fit for any purpose held out by the Supplier.

- 5.2 Where the Goods are Ex-Hire Goods or Second Hand Goods, the Supplier is selling such Goods on an "as seen" and "as is" basis and is not giving any warranty other than those that cannot be limited or excluded at law in respect of such Ex-Hire Goods or Second Hand Goods and the Supplier shall have no liability to the Customer for any defect or fault in its design, material and/or workmanship.

- 5.3 Subject to **paragraph 5.4** of this Schedule 2, if:

5.3.1 the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in **paragraph 5.1** of this Schedule 2; and

5.3.2 the Supplier is given a reasonable opportunity of examining such Goods; and

5.3.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.4 The Supplier shall not be liable for a failure to comply with the warranty set out in **paragraph 5.1** of this Schedule 2 in any of the following events:
- 5.4.1 the Customer makes any further use of such Goods after giving notice in accordance with **paragraph 5.3** of this Schedule 2;
 - 5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.4.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - 5.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 5.4.5 the defect arises as a result of fair wear and tear, or wilful damage, negligence, or abnormal storage or working conditions by or on behalf of the Customer; or
 - 5.4.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 The Supplier shall have no liability to the Customer for breach of any warranties other than in respect of a failure to comply with the warranty set out in **paragraph 5.1** of this Schedule 2.
- 5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- 5.7 **Paragraphs 1 to 5 (inclusive)** above in this Schedule 2 shall apply to any repaired or replacement Goods supplied by the Supplier.