

TERMS AND CONDITIONS APPLICABLE TO THE PROVISION OF SERVICES AND HIRE OF EQUIPMENT BY IRG LIMITED

1 AGREEMENT

1.1 The following terms and conditions ("Terms") together with each Order (defined below) contain the entire agreement between the Client and the Supplier in relation to the provision of Services and the Hiring of Equipment (both terms defined below) and shall apply to the exclusion of all other terms and conditions (irrespective of when these may be issued or deemed to apply from) and shall supersede all prior representations including but not limited to, drawings, specifications, performance figures, sales literature, price lists and other documentation and/or information thus corresponded by the Supplier to the Client.

1.2 These Terms shall automatically apply to each Order agreed by the Supplier (and any Affiliate of the Supplier) and shall bind each Hire or Service requested by the Client, including any successor organisation of the Client and any Affiliate of the Client who is introduced to the Supplier by the Client.

1.3 These Terms may be updated by the Supplier from time to time and may only be amended by the express written consent of the Supplier.

2 DEFINITIONS AND INTERPRETATION

2.1 In these Terms and Conditions ("Terms"), the following definitions apply:

Affiliate: any ultimate holding company of the Client and any Subsidiary of the Client or its ultimate holding company.

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

Charges: the costs, charges and fees payable for the Hiring of Equipment and the delivery of Services, as set out in the Order, or where emergency Services are provided, as determined in accordance with the Supplier's then current costs, fees and Schedule of Rates.

Client: means the person or firm detailed in the Order and any Affiliate of the Client that Hires Equipment or receives or is the beneficiary of any Services.

Commencement Date: the earlier of: (i) the date this Contract is signed; or (ii) the Client agrees an Order; or (iii) the Supplier delivers Services requested by the Client.

Contract: these Terms and each Order.

Delivery Option: the option for delivery and/installation of the Equipment set out in the Order.

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

Equipment: the items of equipment listed in the Order, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Force Majeure Event: an event beyond the reasonable control of the parties including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, telecommunications failures (including problems with internet transmission) fire, flood, storm or default of the Suppliers or subcontractors.

Hire or Hiring: each hire of Equipment by the Client.

Hire Period: the period commencing when the Client holds the Equipment on hire (including Saturdays, Sundays and Bank Holidays) and ending upon the happening of any of the following events: (i) the Client returns the Equipment to the Supplier's possession; or (ii) the Supplier repossesses or collects the Equipment;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Liability: liability for any and all damages, claims, proceedings, actions, awards, expenses, costs (including but without limitation all legal costs and disbursements), charges, fees, fines and any other direct, indirect, consequential and special losses and/or liabilities.

Order an order for the supply of Services or the Hire of Equipment, the particulars of which have been set out in a quotation issued by the Supplier to the Client (which may be issued electronically or in hard copy form) ("**Quotation**") and which has been accepted by the Client through the issuing of a customer acceptance form, purchase order, or other document or electronic communication that confirms acceptance of the Quotation.

Schedule of Rates: the Supplier's then current schedule of rates, charges, fees and/or costs, as updated from time to time.

Service Term: the period that the Supplier has agreed to supply and/or deliver the agreed Services to or for the benefit of the Client.

Services: means the services and/or work (if any) to be performed by the Supplier for the Client whether in conjunction with the Hire of Equipment (including any delivery and/or collection service for the Equipment) or otherwise.

Specification: any description or specification for the Equipment and/or Services, including any related plans and drawings, that is set out in the Order or otherwise agreed in writing by the Client and the Supplier.

Subsidiary: as regards a company or other person, each company or person: (a) in which it, either directly or indirectly owns 50% or more of the entire issued share

capital, or a majority of the voting rights; or (b) over which it, either directly or indirectly, has the power to secure the manner in which the company's or person's affairs are conducted (and where indirectly means through a chain of ownership or control, of the sort described in (a) or (b), which links it to the company or person concerned).

Supplier: IRG Limited, (T/A Ideal Response) a company registered in England and Wales (Company No. 10822482) whose registered office is at Woodcut Cottage, Crismill Lane Thurnham, Maidstone, ME14 3LY.

Terms: these Terms and Conditions.

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

2.3 A reference to a party includes its personal representatives, successors or permitted assigns.

2.4 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and shall include any subordinate legislation made under that statute or statutory provision, as a mended or re-enacted.

3 SERVICES AND EQUIPMENT HIRE

3.1 In consideration of the Client accepting these Terms and paying all applicable Charges, the Supplier agrees to:

(i) Hire the Equipment; and

(ii) Provide the Services,

as detailed in each Order.

Each Order shall be subject to these Terms to the exclusion of all other terms and conditions, other than those that apply by law or which are expressly agreed to in writing by the Supplier from time to time.

4 TERM

The Contract shall commence on the Commencement Date and continue until terminated as provided in these Terms ("Term").

CLAUSES 5 TO 7 (INCLUSIVE) SHALL APPLY ONLY TO THE PROVISION OF SERVICES

5 SERVICES

5.1 During the Service Term, the Supplier shall deliver those Services requested by the Client and agreed to be supplied by the Supplier.

5.2 The Supplier will provide Services using reasonable care and skill and in accordance with Client's specific instructions as confirmed in an Order or in the absence of any Order, by the Supplier in writing. Where instructions are issued by the Client or agreed by the Supplier then the Supplier may deliver the Services in accordance with:

(i) any relevant trade custom, usage or practice; and/or

(ii) such methods as the Supplier shall consider appropriate on any technical, operational, safety and/or financial grounds or as the Supplier considers is required by the particular situation; and/or

(iii) information stated in any report which is derived from the results of inspection or testing procedures carried out in accordance with the instructions of the Client, and/or the Supplier's assessment of such results on the basis of any technical standards, trade custom or practice, or other circumstances which should in the Supplier's professional opinion be taken into account.

5.3 Should the Client request that the Supplier witness any third-party intervention, the Client agrees that the Supplier's sole responsibility is to be present at the time of the third party's intervention and to forward the results, and/or confirm the occurrence, of the intervention. The Client agrees that the Supplier is not responsible for the condition or calibration of apparatus, instruments and measuring devices used, the analysis methods applied, the qualifications, actions or omissions of third party personnel or the results of their analysis.

5.4 Reports issued by the Supplier will reflect the facts as recorded by the Supplier at the time of the Supplier's intervention only and within the limits of the instructions received or, in the absence of such instructions, within the limits of the alternative parameters applied as provided for in clause 5.1. The Supplier is under no obligation to refer to, or to report upon, any facts or circumstances which are outside of the specific instructions received or alternative parameters applied.

5.5 The Supplier may delegate the performance of all or part of the Services to an agent or subcontractor and the Client authorises the Supplier to disclose all information necessary for such performance to such agent or subcontractor.

5.6 Should the Supplier receive documents reflecting engagements contracted between the Client and third parties or third-party documents, they are considered to be for information only and do not extend or restrict the scope of the Services or the obligations accepted by the Supplier.

5.7 The Client acknowledges that the Supplier, by providing the Services, neither takes the place of the Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of the Client to any third party or that of any third party to the Client.

5.8 All samples shall be retained for such period as the Client expressly requests (but no more than three (3) months) or such other shorter time period as the nature of the sample permits at which point they shall be returned to the Client or otherwise disposed of at the Supplier's discretion after which time Supplier shall cease to have any responsibility for such samples. Storage of samples for more than three (3) months shall incur a storage charge payable by the Client. The Client will be billed a handling and freight fee if samples are returned. Special disposal charges will be billed to the Client if incurred by the Supplier.

5.9 Within one (1) working day from the completion of Services, the Client shall examine the Service and give written notice to the Supplier of any concern that the Supplier has not complied with its obligations hereunder, including:

- (i) whether the Supplier has failed to provide the Service in line with the of the Contract; or
 - (ii) whether there is reason to believe that any damage to the Client's equipment, fixtures and/or fittings has been caused by an act or omission of the Supplier.
- 5.10 Should the Client fail to give such notice within 1 (one) working day from completion of the Service the Supplier shall conclusively assume that the Client accepts the Services delivered as satisfactory and free from any defect or deficiency.
- 5.11 Where Services are ordered by the Client, the Supplier shall supply the Services in all material respects
- 5.12 The Supplier shall (where applicable) use reasonable endeavours to meet any performance dates but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 5.13 The Supplier 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 the Supplier shall notify the Client in any such event.
- 5.14 After provision of the Service, the Supplier shall leave the Client's fixtures and fittings connected to the main services in the same order and condition as they were found prior to the commencement of the Services. Any defects noted during the provision of the Service by the Supplier with regards to the Client's equipment and/or fixtures and fittings will be reported to the Client's representative.

6 SERVICE WARRANTIES

- 6.1 The Supplier warrants that the Services will be performed with reasonable care and skill.
- 6.2 If any of the Services do not conform with the warranty in Clause 6.1 or with the Specification the Supplier's liability shall be limited to re-performing the Services to the extent necessary to make good any breach or defect free of charge and where it does so, the Supplier shall have no further liability to the Client under the warranty in Clause 6.1 in respect of the relevant Services.

7 SERVICE FEES AND PAYMENT

- 7.1 This clause is supplemental to the provisions in clause 18 (FEES, CHARGES AND PAYMENT) below.
- 7.2 Unless clearly otherwise stated, all prices quoted are net prices. Any fees and charges not agreed in advance of the provision of Services shall be based on the Supplier's then current Schedule of Rates (which are subject to change by the Supplier from time to time). All applicable taxes shall be payable by Client.
- 7.3 Where any costs are identified, quantified or varied after the start of the Agreement, the Supplier shall submit these to the Client for approval (not to be unreasonably withheld or delayed) prior to expenditure where reasonably practicable. If the Client unreasonably withholds or delays approval, the Supplier may (without penalty or consequence to the Supplier) delay or cancel the delivery of the Service however the obligation of the Client to pay for the Service and for any costs incurred as a result of such delay or cancellation, will not be affected.
- 7.4 If any unforeseen problems or expenses arise in the course of carrying out the Services the Supplier shall endeavour to inform the Client and shall be entitled to charge additional fees, costs and expenses to cover extra time and cost necessarily incurred to complete the Services.
- 7.5 The Supplier may invoice the Client immediately and following the completion of each Service. The Client shall pay each invoice submitted to it for the Services within fourteen (14) Working Days of issue to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence.

CLAUSES 8 - 16 (INCLUSIVE) APPLY ONLY TO HIRES AND EQUIPMENT INSTALLATIONS

8 EQUIPMENT HIRE AND HIRE PERIOD

- 8.1 The Supplier shall hire the Equipment to the Client for the Hire Period subject to the Equipment being available for hire at the time the Client requests it. The Supplier reserves the right to provide Equipment and/or Products similar or comparable to that ordered by the Client. The Supplier will not be liable to the Client or any third party for any loss, cost, damage expense which may be suffered or incurred by the Client or any third party as a result of the Equipment being unavailable for hire.
- 8.2 If the Hire Period does not have a fixed duration either party may terminate an Order for the Hire of Equipment upon giving to the other party not less than 24 hours.
- 8.3 If the Client is a consumer, individual or partnerships of individuals (or other unincorporated body of individuals), the Hire Period must not exceed three months and the Supplier shall collect the Equipment before the last day of the three (3) month period.
- 8.4 The Supplier's employees or agents are not authorised to make any representations concerning the Equipment and/or Products unless expressly confirmed in writing and any advice or recommendation given by the Supplier to the Client as to the storage, application or use of the Equipment and/or Products which is not confirmed in writing is followed or acted upon entirely at the Client's own risk. Any samples, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued for the sole purpose of giving an approximate idea of the Equipment and Services described in them. They shall not form part of this Contract or have any contractual force.
- 8.5 It is the Client's responsibility to check the Equipment on each occasion before use. Final determination of the suitability of the Equipment for the Client's specific use is the Client's responsibility and the Client must assume all risk and liability in this regard.
- 8.6 The Client shall obtain and comply with all permissions, consents and licences required for the Equipment under any statute, regulation or by-law.

9 DEPOSIT, CHARGES AND PAYMENT TERMS

- 9.1 This clause is supplemental to clause 18 (FEES, CHARGES AND PAYMENT) below.
- 9.2 The Deposit and Charges are detailed in the Order and shall be based on the Supplier's Schedule of Rates as amended from time to time.
- 9.3 Where a Deposit is required for the Equipment it must be paid to the Supplier before the Hire Period. Deposit balances are refunded upon return to the Supplier of Equipment in good condition. Balances of deposits paid by cheque will be refunded

by cheque or BACS transmission within seven (7) business days however the Supplier shall not be liable for any bank delays in processing such refund.

- 9.4 The Client shall pay the Charges from the date specified in the Order and will continue paying the Charges during the Hire Period and beyond until the Client has returned the Equipment to the Supplier or the Supplier has collected the Equipment within a reasonable period after the Hire Period.
- 9.5 All time during the Hire Period is chargeable and the Charges may be payable on Saturdays, Sundays and Bank Holidays (as appropriate).
- 9.6 If the Client in any way prevents or hinders the Supplier from collecting the Equipment, charges shall continue to be payable in accordance with the Contract until such time as the Supplier can collect the Equipment. Any signature provided by the Client's employees, agents, or representatives shall be deemed to be an authorised signature for and on the Client's behalf for the purpose of the Contract.

10 DELIVERY AND INSTALLATION OF THE EQUIPMENT

- 10.1 If the Supplier agrees to deliver the Equipment to the Client and/or collect the Equipment from the Client, then such delivery and/or collection of the Equipment shall be made in accordance with the Delivery Option chosen by the Client and the Supplier will charge the Supplier's standard delivery and/or collection cost(s) from time to time. The Client shall also pay for any lifting or special apparatus required for the siting and removal of the Equipment. There may be additional installation and removal costs which will be notified to the Client in advance.
- 10.2 Any dates quoted for delivery/installation are approximate only and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery/installation of the Equipment that is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment. If the Supplier fails to deliver/install the Equipment for any other reason, its Liability shall be limited to refunding or crediting the amount of fees to the Client for the period that the Equipment was not delivered or installed. Whether a refund or credit is issued shall be a decision made by the Supplier.
- 10.3 To facilitate delivery and installation, the Client shall at its own expense provide all requisite materials, facilities, access and suitable working conditions to enable delivery and installation to be carried out safely and expeditiously. If any access, vehicle, equipment, utility or service is not at the agreed location at the agreed time to enable the Supplier to install the Equipment, the Supplier may charge the Client additional fees for a different installation date.
- 10.4 If the parties agree an installation schedule which is later changed by the Client, the Supplier reserves the right to deliver the Equipment on the original agreed date and to start invoicing the Client for the Charges, notwithstanding that the Equipment may not be installed.
- 10.5 If the Supplier is not expressly responsible for delivery, then the Client shall collect the Equipment from the Supplier and return it to the Supplier at the end of the Hire Period.

11 EQUIPMENT WARRANTY

- 11.1 The Supplier warrants that on delivery the Equipment shall:
- (i) conform in all material respects with its description and any applicable Specification; and
 - (ii) be free from material defects in design, material and workmanship.
- 11.2 If:
- (i) the Client gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Equipment does not comply with the warranty set out in Clause 11.1; and
 - (ii) The Supplier is given a reasonable opportunity of examining such Equipment; and
 - (iii) The Supplier confirms that the issue is covered under warranty,
- then, the Supplier shall, at its option and sole discretion, repair or replace the defective Equipment.
- 11.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty set out in condition 11.1 in any of the following circumstances, and in each, the Supplier may charge the Client the costs of any parts and labour incurred or required:
- (i) the Client makes any further use of such Equipment after giving notice in accordance with condition 11.2; or
 - (ii) the defect arises because the Client failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same; or
 - (iii) the Client alters or repairs such Equipment without the prior written consent of the Supplier; or
 - (iv) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (v) the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 11.4 Except as expressly provided for in this Clause, the Supplier shall have no Liability to the Client in respect of the Equipment's failure to comply with the warranty set out in condition 11.1.
- 11.5 These Terms shall apply equally to any repaired or replacement Equipment, Product or Service supplied by the Supplier.

12 RISK, OWNERSHIP AND INSURANCE

- 12.1 Risk in the Equipment will pass to the Client immediately when the Equipment leaves the Supplier's physical possession or control and will not pass back to the Supplier from the Client until the Equipment is returned to the Supplier's physical possession and control.
- 12.2 Ownership of the Equipment remains with the Supplier at all times. The Client shall have no right, title or interest in the Equipment except that it is hired to the Client.
- 12.3 The Client must not deal with the ownership or any interest in the Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending.

13 CARE OF EQUIPMENT

- 13.1 The Client shall:
- (i) not deface or remove any labels from and/or interfere with the Equipment, their working mechanisms or any other parts;
 - (ii) take reasonable care of the Equipment and keep them properly maintained and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided to or supplied to the Client and any applicable law or regulations (including any Institution of Electrical Engineers (IEE regulations);
 - (iii) notify the Supplier immediately and in any event within 24 hours after any breakdown, loss and/or damage to the Equipment or of any accident resulting in death, personal injury or damage to property;
 - (iv) take adequate and proper measures to protect the Equipment from theft, damage and/or other risks;
 - (v) notify the Supplier of any change of the Client's address and upon the Supplier's request provide details of the location of the Equipment;
 - (vi) permit the Supplier at all reasonable times to inspect the Equipment including procuring access to any property where the Equipment is situated;
 - (vii) keep the Equipment at all times in the Client's possession and control and not to remove the Equipment from the United Kingdom without the Supplier's prior written consent;
 - (viii) not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Equipment;
 - (ix) not continue to use Equipment where it has been damaged; and
 - (x) where the Equipment requires fuel, oil and/or electricity ensure that the proper type and/or voltage is used.
- 13.2 The Client must return the Equipment in good working order and condition (fair wear and tear excepted) and in a clean condition together with all licences, registration and other documents relating to the Equipment.

14 BREAKDOWN

- 14.1 Allowance will be made in relation to the Charges for any non-use of the Equipment due to breakdown caused by the development of an inherent fault and/or fair wear and tear provided that the Client informs the Supplier as soon as practicable of the breakdown.
- 14.2 The Client shall be responsible for all expenses, loss (including loss of Charges) and/or damage suffered by the Supplier and arising from any breakdown of the Equipment due to the Client's negligence, misdirection and/or misuse of the Equipment.
- 14.3 The Client will be responsible for the cost of all repairs necessary to Equipment during the Hire Period which arise otherwise than under Clause 7.3 above.
- 14.4 The Client must not repair or attempt to repair the Equipment without the Supplier's prior written consent.
- 14.5 Out of hours assistance shall only be provided if agreed by the Supplier in advance. Additional charges for this service will apply.

15 LOSS OR DAMAGE TO THE HIRED GOODS

- 15.1 If the Equipment is returned in damaged, unclean and/or defective state (except where due to fair wear and tear and/or an inherent fault in the Equipment) the Client shall be liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Equipment to a condition fit for re-hire.
- 15.2 The Client will pay to the Supplier the replacement cost of any Equipment (on a new for old basis) which is lost, stolen and/or damaged beyond economic repair during the Hire Period.
- 15.3 The Client will pay any costs incurred by the Supplier to track or recover lost or stolen Equipment.
- 15.4 The Client shall pay the Charges for the Equipment up to and including the date the Client notifies the Supplier that the Equipment has been lost, stolen and/or damaged beyond economic repair. From that date until the Supplier has replaced such Equipment (or retrieved any lost or stolen Equipment), the Client shall pay, as a genuine pre-estimate of lost Charges profit, a sum as liquidated damages being equal to two thirds of the Charges that would have applied for such Equipment for that period. The Supplier shall use the Supplier's reasonable commercial endeavours to purchase replacements for such Equipment as quickly as possible using the monies paid under Clause 15.2.
- 15.5 The Client agrees that where the Client is in breach of Clause 13.1(v) or 13.1(vii), the Supplier shall be entitled to treat the Equipment as lost and the provisions of this Clause 15 shall apply.

16 DAMAGE WAIVER OPTION

- 16.1 A 'Damage Waiver' charge, which shall be equal to 20% of the Hire Charge, (where such Damage Waiver is available as an option) will be added to each Hire Charge unless the Client requests otherwise. Under the 'Damage Waiver', the Supplier will waive any further charge for rectifying any accidentally damaged Equipment. If the Client does not take 'Damage Waiver' then the Client shall remain liable for the cost of rectifying any damaged Equipment and any other costs recoverable in accordance with these Terms.
- 16.2 'Damage Waiver' is not an insurance for Equipment loss or theft. 'Damage Waiver' may be limited depending on the Equipment being Hired and, in any event, the maximum value of loss or damage penalty charges that will be waived for any single Hire will be five thousand pounds (£5000) and the Client shall remain liable for any costs that exceed this amount.
- 16.3 'Damage Waiver' may be invalidated where any of the following conditions are not adhered to.
- (i) The Client is able to demonstrate that reasonable care has been taken to prevent loss or damage to the Equipment.
 - (ii) Theft of Equipment has been reported to the Police and a crime reference number obtained.
 - (iii) The Client has notified the Supplier within 48 hours of any damage to, or theft of, the Equipment.
- 16.4 Loss penalty charges will not be waived under the following circumstances:

- (i) Theft of consumable 'resale' Products.
 - (ii) Loss due to the dishonesty of any Client employee.
 - (iii) Theft from a vehicle where the Equipment was left visible and unattended.
 - (iv) Loss of Equipment revealed only when an inventory is made.
 - (v) Loss arising from civil disturbance.
 - (vi) Loss occurring outside the UK and Eire.
- 16.5 'Damage Waiver' does not protect against:
- (i) The first £50 (or 20% whichever is the greater amount) of any Equipment loss claim.
 - (ii) Fifty per cent (50%) of any claim for theft of Equipment left unattended overnight outside a secure compound or building or stored overnight in a secured vehicle.

THE REMAINING CLAUSES APPLY TO ALL ORDERS

17 OBLIGATIONS OF CLIENT

- 17.1 The Client shall:
- (i) co-operate with the Supplier in all matters relating to the Services; and
 - (ii) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier; and
 - (iii) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects; and
 - (iv) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (v) ensure that sufficient information, instructions and documents are given to the Supplier within 2 hours following first notification of an emergency call-out that is subject to the agreed service response time and not later than 48 hours prior to planned Services unless otherwise agreed in writing by the Supplier to enable the required Services to be performed; and
 - (vi) procure all necessary access for the Supplier's representatives to the premises where the Services are to be performed or the Equipment is to be installed or delivered and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the Services; and
 - (vii) supply, if agreed, any special equipment and personnel necessary for the performance of the Services; and
 - (viii) take all necessary measures to provide safe working conditions and to secure the site and any property or premises (including any fixtures, fittings and utility connections thereto) and associated installations where the Client requests the Services to be performed and the Client will not rely, in this respect, on the Suppliers advice as to whether the Client is required to take action to make such provision or not; and
 - (ix) inform the Supplier in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons; and
 - (x) unless agreed otherwise in writing by the Supplier, supply all necessary lighting and power supply within the area(s) where the Service is to be carried out. The Client shall provide such lighting and electrical power free of charge to the Supplier during delivery of the Service; and
 - (xi) provide a site representative to enable the Supplier to gain access to all areas where the Service is to be carried out. The Client's site representative will be nominated prior to commencement of any Service and will also be available to the Supplier should any problems occur whilst the Service is taking place; and
 - (xii) give access to the Supplier's employees (or nominated contractors) to enable the Supplier to carry out its obligations; and
 - (xiii) not prevent the Supplier from executing any of its duties under statutory provisions or under the terms of the Contract.
- 17.2 If the Supplier's performance of any of its obligations under this Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):
- (i) the Supplier shall, without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
 - (ii) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 17.2; and
 - (iii) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.
- #### 18 FEES, CHARGES AND PAYMENT TERMS
- 18.1 All Charges are, unless otherwise stated, exclusive of any applicable VAT.
- 18.2 Prompt payment under a Contract shall be of the essence. Payment shall not be deemed to be made until the Supplier has received either cash or cleared funds in respect of the full amount outstanding.
- 18.3 The Client shall pay all sums due to the Supplier under the Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 18.4 The Supplier may set a reasonable credit limit for the Client. The Supplier reserves the right to terminate or suspend the Contract for hire of the Equipment and/or the provision of Services if allowing it to continue would result in the Client exceeding the Client's credit limit or if the Client has already exceeded their credit limit.
- 18.5 Without prejudice to any of the Supplier's other rights, if the Client fails to make any payment in full on the due date then:
- (i) the Supplier may charge the Client interest (both before and after judgment) on the amount unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of

Commercial Debts Regulations 2002 and/or to suspend further Services to the Client or any of the Client's Affiliates.

- (ii) the Supplier may cancel or suspend all Services until payment has been made in full; and
- (iii) the Supplier may refer such non-payment to its credit control agency and the Client shall become liable for any costs incurred in recovering or attempting to recover outstanding monies.

18.6 The Client shall not be entitled to retain or defer payment of any sums due to the Supplier on account of any dispute, counter claim or set-off which it may allege against the Supplier.

18.7 In event of legal action being taken by the Supplier against the Client for breach of payment obligations, the Client shall be responsible for all costs and disbursements incurred by the Supplier on a fully indemnified basis.

18.8 Where a credit account has not been granted, payment of the Charges shall be made with the Order.

19 CONFIDENTIALITY

19.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

- (i) is or becomes publicly known other than through any act or omission of the receiving party; or
- (ii) was in the other party's lawful possession before the disclosure; or
- (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (iv) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (v) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

19.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Contract.

19.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.

19.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

19.5 The Client acknowledges that details of the Supplier, and the results of any performance tests of the Supplier, constitute the Supplier's Confidential Information.

19.6 The Supplier acknowledges that the Client Data is the Confidential Information of the Client.

19.7 Each party shall comply with its obligations arising under the General Data Protection Regulation 2016 (Regulation (EU) 2016/679) (GDPR) except where the UK Data Protection Act 1998 (or legislation, other than the GDPR, equivalent to that Act in force from time to time in the UK at any time that it is not a member state of the European Union).

20 SUSPENSION, TERMINATION AND CONSEQUENCES

20.1 If the Client:

- (i) fails to make any payment to the Supplier when due; or
- (ii) is in breach of the terms of the Contract and, where the breach is capable of remedy, have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- (iii) persistently breaches the terms of the Contract; or
- (iv) provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract; or
- (v) attempts to pledge, charge or create any form of security over any Equipment; or
- (vi) ceases or threatens to cease to carry on business; or
- (vii) being an individual or partnership, has a bankruptcy petition presented against it or compounds with or comes to an arrangement with its creditors, or enters into an individual voluntary arrangement or suffers any similar action in any jurisdiction; or
- (viii) being a company, enters into voluntary or compulsory liquidation, have an administrator or administrative receiver appointed over all or any of the Client's assets, or compound with or come to an arrangement with the Client's creditors or enter into a company voluntary arrangement, any attachment order is made against the Client, any distress, execution or other legal process is levied on any of the Client's property or the Client suffer any similar action in any jurisdiction; or
- (ix) has circumstances in which the Supplier reasonably believes that any of the events mentioned in (vii) or (viii) above are about to occur and the Supplier notifies the Client of this belief; or
- (x) appears reasonably to the Supplier due to the Client's credit rating to be financially inadequate to meet the Client's obligations under the Contract; or
- (xi) appears reasonably to the Supplier to be about to suffer any of the above events,

then the Supplier shall have the right, without prejudice to any other rights or remedies, to exercise any or all of the rights set out in Clause 20.2 below.

20.2 If any of the events set out in Clause 20.1 above occurs in relation to the Client then without liability or consequence to the Supplier and notwithstanding any other remedy available to the Supplier:

- (i) the Supplier shall be entitled to invoice and the Client shall be liable to pay, the Supplier's full costs, expenses and charges for any lost time.
- (ii) the Supplier may enter, without prior notice, any of the Client's premises (or premises of third parties with their consent) where the Equipment may be and repossess any Equipment;

- (iii) the Supplier may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract between the Client (or any of the Client's Affiliates) and the Supplier (or any of the Supplier's Affiliates);
- (iv) the Supplier may immediately cancel, terminate and/or suspend without Liability to the Client the Contract and/or any other contract between the Client (or any of the Client's Affiliates) and the Supplier (or any of the Supplier's Affiliates);
- (v) any credit period in relation to payment of the Charges shall be accelerated and all sums, all monies owed by the Client (or any of the Client's Affiliates) to the Supplier (or any of the Supplier's Affiliates) under the Contract or any other Contract between the Client (or any of the Client's Affiliates) and the Supplier (or any of the Supplier's Affiliates) shall immediately become due and payable.

20.3 Any repossession of the Equipment or suspension or termination of Services shall not affect the Supplier's right to recover from the Client (or any Affiliates of the Client) any monies due under the Contract or any other contract between the Client (or any of the Client's Affiliates) and the Supplier (or any of the Supplier's Affiliates) and/or any damages from acts, omissions or events occurring prior to suspension or termination.

20.4 The Client may cancel or suspend the Services at any time, however the Client acknowledges that if it cancels or suspends the Services for any reason on less than 48 hours' notice prior to the anticipated start time of the Services or at any time during the Services, the Supplier is unlikely to be able to redeploy all or part of the committed labour, or to cancel contractors or other third party commitments without incurring charges or the full cost of those commitments. Accordingly, the Client agrees that where it cancels or suspends any part of the Services on less than 48 hours' written notice and by telephone call to the Supplier, that it shall remain fully liable for the Services as quoted, minus any costs, charges or fees that the Supplier, using reasonable endeavours, is able to offset through redeployment on other projects or services. If the Client suspends or cancels the Services once commenced it shall remain fully liable for the full cost of the Services as quoted together with any additional Services requested prior to suspension or cancellation or which are incurred or required due to the suspension or cancellation of the Services.

20.5 Any cancellation, suspension or termination of Services shall not affect the Supplier's right to recover from the Client (or any Affiliate of the Client) any monies due under the Contract or any other contract between the Client (or any of the Client's Affiliates) and the Supplier and/or any damages from acts, omissions or events occurring prior to suspension or termination of Services.

20.6 Upon termination of the Contract (for any reason) the Client shall immediately on demand pay the Supplier (or any of the Supplier's Affiliates), in full and cleared funds, all outstanding Charges and/or any other sums payable under the Contract or any other contract between the Supplier (or any of the Supplier's Affiliates) and the Client (or any of the Client's Affiliates).

20.7 If the Client terminates an Order or the Contract prior to the completion of any Services which have been commenced by the Supplier for reasons other than material breach of the Contract by the Supplier which it is unable to remedy within a reasonable time, then the Supplier reserves the right to charge the Client the agreed fees and Charges payable for the Services.

20.8 Upon termination of the Contract (for any reason) the Client shall immediately:

- (i) at the Client's expense, return the Equipment to the Supplier or make the Equipment available for the Supplier to collect; and
- (ii) pay to the Supplier (or any of the Supplier's Affiliates), in full and cleared funds, all outstanding Charges and/or any other sums payable under the Contract or any other contract between the Supplier (or any of the Supplier's Affiliates) and the Client (or any of the Client's Associated Companies).

20.9 Until any Equipment is returned to the Supplier, the Client shall be solely responsible for the safe keeping of the Equipment and will not use it for any purpose not expressly permitted by the Supplier.

20.10 The Supplier shall be entitled to immediately and without liability, either suspend or terminate provision of the Services or a Hire at any time if in the reasonable opinion of the Supplier, to continue the same would present a risk to the Supplier or its Equipment.

20.11 If the Client terminates an Order or the Contract prior to the expiry of the Hire Period or completion of any particular Services which have been commenced by the Supplier for reasons other than breach of the Contract by the Supplier, then the Supplier reserves the right to charge the Client the agreed fees and Charges payable for the Services for the Service Term or for the Hire for the Hire Period (as the case may be).

21 LIMITATION OF LIABILITY

21.1 Subject to clause 21.9 (which clause shall take precedence over all other clauses in this clause 21) this clause 21 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client or any third party, in respect of:

- (i) any breach of the Contract, howsoever arising; and
- (ii) any use made by the Client of any of the Services, or of any product or material incorporated in any of the Services; and
- (iii) the Hire of any Equipment; and
- (iv) any representation, statement or tortious act or omission including negligence arising under or in connection with this Contract.

21.2 The Client shall be liable for the acts and/or omissions of its Affiliates, employees, agents, servants and/or subcontractors as though they were the Client's own acts and/or omissions under the Contract.

21.3 The Client agrees to indemnify and to keep indemnified the Supplier against any Liability suffered by the Supplier and arising from or due to the Client's breach of contract, tort (including negligence) and/or any breach of statutory duty and/or any claim from a third party for injury to person or property arising from the Client's use or storage of the Equipment or its negligence.

- 21.4 All warranties, representations, terms, conditions and duties implied by statute or common law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.
- 21.5 The Supplier must be given the first opportunity to fully inspect and test any defective or damaged Equipment or property and unless required to mitigate the Client's loss, the Client shall not arrange for any separate inspection or testing without the prior written and express authorisation of the Supplier.
- 21.6 The Supplier shall have no Liability:
- (i) to the Client if any amount payable under the Contract has not been paid in full and cleared funds by the due date for payment; and/or
 - (ii) resulting from or contributed to by the Client's continued use of defective Equipment after a defect has become apparent or suspected or should reasonably have become apparent to the Client; and/or
 - (iii) for any delayed, partial or total non-performance of the Services arising directly or indirectly from any event outside the Supplier's control including but not limited to any failure by the Client to comply with any of its obligations hereunder or a Force Majeure Event; and/or
 - (iv) to the Client or in relation to property to the extent that the Client is covered by any policy of insurance and the Client shall ensure that the Client's insurers waive any and all rights of subrogation they may have against the Supplier; and/or
 - (v) whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise for any indirect, special or consequential loss, including but not limited to:
 - (a) loss of profit or
 - (b) loss of goodwill; or
 - (c) business interruption, loss of business, contracts and/or opportunity; or
 - (d) loss of anticipated savings or wasted management or other time or resource; or
 - (e) any third party (including, without limitation, product liability claims) that may be incurred by the Client; or
 - (f) any special, indirect or consequential damage suffered by the Client in connection with this Contract; or
 - (g) economic and/or other similar losses.
- 21.7 In the event of a failure on the part of the Supplier to properly deliver the Services in accordance with the Contract, the Client's sole remedy shall be limited to the Supplier reperforming the defective or deficient Services or providing the Client with a credit to the value of the defective or deficient Services and the election of such remedy shall be determined solely by the Supplier.
- 21.8 To the extent that the Supplier is deemed liable to the Client under and/or arising in relation to the Contract, the Supplier's total Liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the Contract shall not exceed the Charges paid for the Equipment Hired or Service delivered to which the Liability relates and in any event, the Supplier's Liability in respect of any loss or damage to any property of the Client shall in no circumstances exceed the retail cost of replacement of the damaged property.
- 21.9 Nothing in this Contract excludes or limits the liability of the Supplier:
- (i) for death or personal injury caused by the Supplier's negligence; or
 - (ii) for fraud or fraudulent misrepresentation; or
 - (iii) for any matter which it would be illegal for the Supplier to exclude or attempt to exclude or limit its liability.
- 21.10 The Supplier is neither an insurer nor a guarantor and disclaims all liability in such capacity. The Client must separately assess its own risks and insure and mitigate them to the extent expected of a prudent provider of the goods, services and/or business supplied by the Client.
- 21.11 Reports issued on the basis of information, documents and/or samples provided by, or on behalf of, the Client ("Reports") are solely for the benefit of the Client who is responsible for acting as the Client sees fit on the basis of such Reports. Neither the Supplier nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any actions taken or not taken on the basis of such Reports nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Supplier.
- 21.12 In the event of any claim against the Supplier, the Client must give written notice to the Supplier of such claim within thirty (30) days of discovery of the facts alleged to justify such claim and, in any case, the Supplier shall be discharged from all Liability unless suit is brought within one year from:
- (i) the date of performance by the Supplier of the service which gives rise to the claim; or
 - (ii) the date when the Service should have been completed in the event of any alleged non-performance; or
 - (iii) the date when those circumstances giving rise to a claim in relation to any Hire, arose.
- 22 GENERAL**
- 22.1 If there is an inconsistency between any of the provisions in the main body of the Contract, the provisions in these Terms shall prevail.
- 22.2 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 22.3 No failure or delay by the Supplier to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 22.4 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 22.5 Any conditions which expressly or by implication survive termination shall continue in full force and effect.
- 22.6 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of, to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 22.7 If any provision of this Contract is found by any court, tribunal or administrative body to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of this Contract and the remainder of such provision shall continue in full force and effect.
- 22.8 The Client and the Supplier agreed that no term of this Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it other than an Affiliate or successor of the Supplier.
- 22.9 The formation, existence, construction, performance, validity and all aspects of this Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts in the determination of any matter relating to the Contract.
- 23 TERMS APPLYING TO CONSUMERS ONLY**
- PLEASE NOTE THAT THIS CLAUSE ONLY APPLIES WHEN THE CLIENT ENTERS THIS CONTRACT AS A CONSUMER.
- 23.1 Where the Client is a consumer (as defined under the Unfair Contract Terms Act 1977) and enters into this Contract not in the course of business, the Supplier acknowledges and agrees that a Court may determine that some of the Terms may not apply to this Contract.
- 23.2 Should any defect occur in the Equipment and/or Products, other than one for which the Client is responsible, the Supplier will at its option either, replace or repair the Equipment and/or Products (at no charge to the Client) as soon as is reasonably practicable. The Supplier shall not replace, repair or service any Equipment and/or Products until any outstanding Charges have been paid in full and cleared funds.
- End of Terms –
Date of issue: January 2019