

# Mobile Fencing & Security

## Terms and Conditions : Heras Mobile Fencing & Security

### Hire & Sales

#### 1. Interpretation

- In these Conditions the following words have the following meanings:
  - "Affiliates"** means a party's parent undertakings and each of its subsidiary undertakings and each of its parent undertakings' subsidiary undertakings from time to time (and for the purposes of this definition "parent undertaking" and "subsidiary undertaking" shall have the meanings set out in section 1162 of the Companies Act 2006);
  - "Business Day"** means any day other than a Saturday, Sunday or public holiday in England;
  - "Conditions"** means the terms and conditions set out in this document;
  - "Contract"** means any agreement made between the Customer and the Supplier for the hire of Hire Goods, the sale of Products and/or the provision of Services which incorporate these Conditions;
  - "Customer"** means the person to whom the Supplier is to hire the Hire Goods to, sell the Products to and/or provide the Services to pursuant to a Contract;
  - "Delivery"** has the meaning given in Condition 9.1;
  - "Delivery Address"** has the meaning given in Condition 9.1.2;
  - "Hire Goods"** means any temporary fencing panel, panel accessory, machine, article, tool, and/or device together with any accessories specified in the quotation or acknowledgement of order which are hired to the Customer;
  - "Hire Period"** has the meaning given in Condition 8.2;
  - "Liability"** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
  - "Price"** means the price for the Products and/or Services (as appropriate) current at the time the order is accepted;
  - "Products"** means the products sold to the Customer by the Supplier pursuant to a Contract;
  - "Rental Charges"** means the Supplier's charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period;
  - "Supplier"** means CRH Fencing and Security Group (UK) Ltd trading as Heras Mobile Fencing & Security (company number 02840742); and
  - "Services"** means the services and/or work (if any) to be performed by the Supplier for the Customer in conjunction with the hire of Hire Goods as agreed and set out in the quotation or order acknowledgement including any installation, delivery and/or collection service for the Hire Goods.
- In these Conditions:
  - all headings and references to them are for identification and indexing purposes only and they shall not affect the construction or interpretation;
  - references to conditions are to be construed as references to the clauses of these Conditions, except where expressly stated otherwise;
  - any reference to any statute, law, statutory instrument, regulation or other similar instrument having the force of law shall be deemed to include any lawful amendment, re-enactment, extension, replacement, modification, consolidation and/or repeal thereof;
  - any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender;
  - any reference to a person shall, unless the context otherwise requires, include natural persons, firms, partnerships, corporate bodies, unincorporated bodies, corporations, associations and all other legal persons of whatever kind howsoever constituted;
  - any reference to "include", "includes", "including" and "included" shall be construed without limitation, unless inconsistent with the context; and
  - any reference to a "party" shall mean either the Supplier or the Customer as the context requires and reference to "parties" shall mean both of them.

#### 2. Application

- These Conditions alone shall govern and be incorporated in every Contract for the hire of Hire Goods, sale of Products and/or provision of Services made by or on behalf of the Supplier with a Customer. They shall apply in place of and prevail over any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by the Customer, in correspondence or elsewhere or implied by trade custom, practice or course of dealing.
- Acceptance by the Customer of Delivery of the Hire Goods, Products or commencement of the Services (as appropriate) shall (without prejudice to Condition 3 or any other manner in which acceptance of these Conditions may be evidenced) be deemed to constitute unqualified acceptance of these Conditions.
- A variation of these Conditions is valid only if it is in writing and signed by a director or authorised representative of the Supplier.

#### 3. Quotations and acceptance

- A quotation by the Supplier does not constitute an offer. Any quotation is given on the basis that no Contract shall come into existence until the Supplier accepts the Customer's order in accordance with Condition 3.3. The Supplier reserves the right to withdraw or revise a quotation at any time prior to the Supplier's acceptance of the Customer's order. Any quotation is valid for a period of 30 days only from its date, provided that the Supplier has not previously revised or withdrawn it.
- Each order or acceptance of a quotation for Hire Goods, Products and/or Services by the Customer shall be deemed to be an offer by the Customer to hire the Hire Goods and/or buy the Products and/or Services subject to these Conditions.
- The Supplier's acceptance of the Customer's order (including telephone orders) shall be effective only where such acceptance is in writing and signed by an authorised representative of the Supplier.
- The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- The hire by the Customer of each item of Hire Goods shall be treated as a distinct Contract which shall be separate to any other Contract relating to other Hire Goods.

#### 4. Description

- The quantity and description of the Hire Goods, Products and/or Services shall be as set out in the Supplier's quotation or written acceptance of the Customer's order.
- Any representations about the Hire Goods, Products and/or Services shall have no effect unless expressly agreed in writing and signed by a director or authorised representative of the Supplier. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- All samples, drawings, designs, descriptive matter, specifications, particulars of weight and dimensions and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Hire Goods, Products and/or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- The Supplier accepts no responsibility for any errors, omissions or other defects in any drawings, designs or specifications not prepared by the

Supplier. The Customer shall indemnify the Supplier against each loss, liability and cost which the Supplier incurs arising from them.

## 5. Rental charges and price

1. Unless otherwise agreed by the Supplier in writing, any deposit payable, the Rental Charges payable for the Hire Goods and the Price payable for the Products and Services shall be as set out on the quotation or order acknowledgement or is the price listed in the Supplier's published list of prices current at the time of despatch or supply of the Products or Services.
2. The Supplier may at any time prior to the Delivery of the Hire Goods, Products and/or provision of the Services:
  1. withdraw any discount from its normal prices; and/or
  2. revise prices to take account of inflation, increases in costs including costs of any goods, materials, carriage, labour or overheads and the increase or imposition of any tax, duty or other levy.
3. During a Hire Period, the Supplier shall be entitled to increase the Rental Charges to take account of inflation, increases in costs including costs of any goods, materials, carriage, labour or overheads and the increase or imposition of any tax, duty or other levy upon 28 days' notice to the Customer where the Contract has continued for 12 months or more
4. Where the quotation or any order acknowledgement states that a deposit is to be paid by the Customer, the Supplier shall not supply the Hire Goods, Products and/or Services until it has received the deposit in full in cleared funds.
5. The Rental Charges and Prices are stated exclusive of VAT and any other applicable tax or duty for which the Customer shall additionally be Liable as well as all costs or charges in relation to packaging, loading, unloading, carriage and insurance.

## 6. Payment terms

1. The Customer shall pay the Rental Charges, the Price and any other sums payable under the Contract to the Supplier in cleared funds within 30 days of the date of the invoice, unless otherwise agreed.
2. The time for any payments by the Customer under a Contract shall be of the essence. Payment shall not be deemed to be made until the Supplier has received cleared funds in respect of the full amount outstanding.
3. The Customer shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
4. If full payment is not received by the Supplier by the due date then without prejudice to its rights the Supplier shall be entitled to charge interest (both before and after any judgment) for the period from that date to the date of payment at the rate of four per cent. (4%) per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis and be compounded quarterly. This shall not affect the Supplier's right to claim statutory interest as provided for in the Late Payment of Commercial Debts (Interest) Act 1998.
5. Subject to the Supplier's approval, the Supplier may grant credit facilities to the Customer which, if granted, must be adhered to. The Supplier may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend the Contract for hire of the Hire Goods and/or the provision of Services if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded. The Supplier may increase or decrease the Credit Limit upon 30 days' notice to the Customer.
6. The Supplier and any of its Affiliates may, without prejudice to any other rights it or they may have at any time, set off any indebtedness of the Customer or any of its Affiliates against any indebtedness of the Customer or any of the Customer's Affiliates and/or apply any credit balance (whether or not then due) to which the Supplier or any of its Affiliates is at any time beneficially entitled on any account of the Supplier or its Affiliates in (or towards) satisfaction of any sum then due and payable by the Customer or any of the Customer's Affiliates and which remains unpaid.
7. All payments payable to the Supplier under a Contract shall become due immediately on its termination despite any other provision.
8. If, in the opinion of the Seller, the credit-worthiness of the Buyer deteriorates

before Delivery of the Hire Goods or Products or provision of the Services, the Supplier may require full or partial payment of the price prior to delivery or the provision of security for payment by the Customer in a form acceptable to the Supplier.

## 7. Risk, title and insurance

1. Risk in the Hire Goods and Products will pass immediately to the Customer when they leave the physical possession or control of the Supplier.
2. Risk in the Hire Goods will not pass back to the Supplier from the Customer until the Hire Goods are back in the physical possession of the Supplier. This shall apply even if the Supplier has agreed to cease charging the Rental Charges.
3. Title in the Hire Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer. Title in any Products remains with the Supplier until all monies payable to the Supplier by the Customer (on any account and under any Contract) have been paid in full.
4. The Customer must not deal with the title or any interest in the Hire Goods. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, exerting a lien and/or lending. The Customer may only re-hire the Hire Goods to a third party with the prior written consent of the Supplier and provided that the Customer shall remain Liable at all times to the Supplier for any loss of or damage to the Hire Goods whilst re-hired to a third party and for all Rental Charges on the same.
5. The Supplier may provide insurance in respect of the Hire Goods at additional cost to the Customer. Alternatively the Supplier may require the Customer to insure the Hire Goods on such reasonable terms and for such reasonable risks as the Supplier may specify. The proceeds of any such insurance shall be held by the Customer in trust for the Supplier and be paid to the Supplier on demand. The Customer must not compromise any claim in respect of the Hire Goods and/or any associated insurance without the Supplier's written consent.
6. Until title in the Products has passed to the Customer and at all times during the Hire Period in respect of the Hire Goods, the Customer is in possession of the Products in a fiduciary capacity and shall:
  1. not part with possession of them (otherwise than in accordance with Condition 7.9);
  2. keep them free from any charge, lien or encumbrance and store them (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;
  3. not destroy, deface or obscure any identifying mark or packaging on or relating to them;
  4. maintain them in satisfactory condition;
  5. give the Supplier such information about them as the Supplier may from time to time require; and
  6. notify the Supplier immediately upon the happening of any of the termination events set out in Condition 13.1.
7. The Supplier reserves the right to repossess and resell or re-hire (as appropriate) any of the Products or Hire Goods to which it has retained title. The Supplier's consent to the Customer's possession of the Products and Hire Goods and any right the Customer may have to possession of the Products and Hire Goods shall in any event cease upon the happening of any of the events set out in Condition 13.1.
8. The Customer grants to the Supplier, its agents and employees an irrevocable right and licence to enter the Customer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing Products and/or Hire Goods to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any reason of a Contract and is without prejudice to any accrued rights of the Supplier under a Contract or otherwise.
9. Whilst the Customer is in possession of the Products with the Supplier's consent (but not otherwise) the Customer may in the ordinary course of business sell the Products or any new product or products produced with the Products before ownership of the Products has passed to the Customer provided that:

1. as between the Customer and its sub-customer the Customer sells the Products as principal and the Customer is not and shall not be empowered to commit the Supplier to any contractual relationship with or liability to the sub-customer or any other person;
  2. as between the Supplier and the Customer, the Customer sells the Products in a fiduciary capacity as agent for the Supplier;
  3. the Customer holds such part of the proceeds of sale as represent the amount owed by the Customer to the Supplier on trust for the Supplier and does not mingle such proceeds with any other monies or pay them into an overdrawn bank account; and
  4. notwithstanding any agreed period of credit for payment of the price of the Products, the Customer shall pay such proceeds of sale to the Supplier forthwith upon receipt.
10. Notwithstanding the provisions of this Condition 7 the Supplier may:
1. bring an action against the Customer for the Price of the Products or the Rental Charges in the event of non-payment by the Customer by the due date even though ownership of the Products has not passed to the Customer; and
  2. by notice to the Customer at any time after Delivery pass title in the Products to the Customer with effect from the date of the notice.
11. On termination of a Contract for any reason, the Supplier's (but not the Customer's) rights contained in this Condition 7 shall remain in effect.

## 8. Hire period

1. Hire Goods are hired subject to them being available for hire to the Customer at the time required by the Customer.
2. The "Hire Period" may be for a fixed duration as specified on the quotation or order acknowledgement or continue on a daily or weekly basis (as agreed) until cancelled by either party by giving such period of notice as has been agreed between the parties or, if no notice period is agreed until:
  1. the physical return of the Hire Goods by the Customer to the Supplier's possession; or
  2. the physical repossession or collection of Hire Goods by the Supplier; or
  3. the Supplier giving the Customer no less than 14 days' notice, it being acknowledged and accepted by the Customer that unless otherwise agreed in writing by the Supplier, the minimum Hire Period shall be four weeks.
3. Where hire of the Hire Goods is to a Customer who is an individual and the hire would be covered by the Consumer Credit Act 1974 the duration of the hire shall not exceed 3 months. Accordingly the hire of any Hire Goods is not covered by the Consumer Credit Act 1974.

## 9. Delivery, collection and services

1. "Delivery" shall be deemed to have been effected as follows:
  1. when the Supplier makes the Hire Goods and/or the Products available at the Supplier's premises for the Customer to collect; or
  2. in the event the Supplier expressly agrees to deliver the Hire Goods and/or Products to the Customer's premises or an alternative site named by the Customer (the "Delivery Address") (at its standard delivery cost), when the Hire Goods are made available for unloading by the Supplier at the Delivery Address.
2. Where Delivery is made in accordance with Condition 9.1.2, the Customer shall ensure that there is sufficient access to and from the Delivery Address to enable the Supplier to Deliver the Hire Goods and/or Products. It is the Customer's responsibility to load and unload all Hire Goods and/or Products (as appropriate) unless expressly agreed otherwise. Where it is agreed that the Supplier will be responsible for loading or unloading, the Customer shall provide all necessary facilities and equipment to enable the Supplier to load or unload the Hire Goods or Products at the Delivery Address safely and effectively.
3. Where the Supplier has agreed to provide Services:
  1. the employees, agents or sub-contractors of the Supplier ("Supplier's Personnel") engaged to provide the Services to the Customer shall act in accordance with Customer's reasonable direction and control. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to the Supplier's Personnel and for any

1. damage which occurs as a result of the Supplier's Personnel following the Customer's instructions, guidance and/or advice;
  2. the Customer shall provide all necessary facilities, equipment and access to power supplies necessary for the Supplier's Personnel to carry out the Services;
  3. the Customer will ensure that the site where the Services are to be performed is, where necessary, cleared and prepared before the Services are due to commence; and
  4. if the provision of any Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations under the Contract, the Customer will be Liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation.
4. The Customer must give three Business Days' notice if the Hire Goods are to be collected from the Customer's premises (or other agreed place). Failure to do so may mean that the Customer may be responsible for payment of Rental Charges for a maximum of three Business Days beyond the termination date to allow for collection to be arranged.
5. Where the Supplier is responsible for collecting the Hire Goods, the Customer must ensure any fencing is "ready for collection" including stacking fencing panels and accessories as instructed by the Supplier (or if the Supplier has not provided the Customer with any direct instruction, in a neat orderly stack meaning fencing panels raised off the floor with bearers or fencing feet at each corner), with access for a suitable vehicle to draw alongside. If fencing is still erected or is not "ready for collection" as set out in this Condition 9.5, the Hire Period will continue until the Customer makes the Hire Goods ready for collection, and gives the Supplier notice in accordance with Condition 9.4, and the Rental Charges will continue to be due.

## 10. Care of hire goods

1. The Customer shall during the Hire Period:
  1. not interfere with the Hire Goods, their working mechanisms or any other parts of them;
  2. take good care of the Hire Goods, store and operate them in a suitable environment and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer;
  3. notify the Supplier immediately after any breakdown, loss of and/or damage to the Hire Goods;
  4. take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Hire Goods are at all times safe and without risk to health when they are being set, used, cleaned or maintained by the Customer;
  5. keep the Supplier fully informed of all material matters relating to the Hire Goods;
  6. 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, underlet or lend the Hire Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
  7. not use the Hire Goods for any unlawful purpose;
  8. ensure that at all times the Hire Goods remain identifiable as being the Supplier's property and shall not remove or obscure any markings to that effect;
  9. take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;
  10. upon the Supplier's request, provide details of the location of the Hire Goods and permit the Supplier at all reasonable times to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;
  11. keep the Hire Goods at all times in its possession and control and not to remove the Hire Goods from the United Kingdom without the prior written consent of the Supplier;
  12. be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hire Goods required by any legislation, best practice and/or operating instructions except to the extent that the Supplier has agreed to provide them as part of any Services;

13. not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Hire Goods;
  14. not continue to use Hire Goods where they have been damaged and will notify the Supplier immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person; and
  15. where the Hire Goods require fuel, oil and/or electricity ensure that the proper type is used and that, where appropriate, the Hire Goods are properly fitted by a qualified and competent person.
2. The Hire Goods must be returned by the Customer in good working order and condition (fair wear and tear excepted) and in a clean condition (everyday grime excepted) together with all insurance policies, licences, registration, operation and/or safety instructions and other documents relating to the Hire Goods.

## 11. Breakdown

1. In the event that the Customer is prevented from using the Hire Goods due to breakdown of the Hire Goods caused by the development of an inherent fault and/or fair wear and tear, the Supplier may make an appropriate reduction to the Rental Charges provided that the Customer informs the Supplier immediately of the breakdown.
2. The Customer shall be Liable for all expenses, loss (including loss of Rental Charges) and/or damage suffered by the Supplier arising from any breakdown of the Hire Goods due to the Customer's negligence or misuse of the Hire Goods or as a result of or in connection with any other failure to comply with these Conditions.
3. The Supplier will at its own cost carry out all routine maintenance and repairs to the Hire Goods during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Hire Goods. The Customer will be responsible for the cost of all maintenance and repair of the Hire Goods deemed necessary by the Supplier during the Hire Period which arise otherwise than as a result of fair wear and tear and/or an inherent fault.
4. The Customer must not repair or attempt to repair the Hire Goods unless authorised to do so in writing by the Supplier.

## 12. Loss or damage to the Hire Goods

1. If the Hire Goods are returned damaged, unclean and/or in a defective state (excepting due fair wear and tear), the Customer shall be Liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for rehire and Rental Charges until such repairs and/or cleaning have been completed.
2. The Customer will pay to the Supplier the replacement cost on a new for old basis of Hire Goods which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to the Supplier under any policy of insurance taken out in accordance with these Conditions.
3. The Customer shall also pay to the Supplier Rental Charges until the Supplier has been paid the amount representing the replacement cost of such Hire Goods in full.

## 13. Termination

1. In the event the Customer:
  1. fails to make any payment to the Supplier when due;
  2. breaches any term of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
  3. persistently breaches the terms of the Contract;
  4. provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
  5. pledges, charges or creates any form of security over any Hire Goods;
  6. ceases or threatens to cease to carry on business, or proposes to compound with its creditors, applies for an interim moratorium in respect of claims and/or proceedings or has a bankruptcy petition presented against it, or being a company, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, any attachment order is made

- against the Customer or any distress, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;
7. is unable to meet its debts as they fall due or otherwise appears to the Supplier (due to the Customer's credit rating) to be financially unable to meet its obligations under the Contract; and/or
  8. 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 Condition 13.2 below.

2. If any of the events set out in Condition 13.1 above occurs in relation to the Customer then the Supplier may:
  1. enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Hire Goods owned by the Supplier or Products in which title has not passed to the Customer may be and repossess them;
  2. withhold the performance of any Services and cease any Services in progress;
  3. stop any Hire Goods or Products in transit;
  4. suspend further Deliveries of Hire Goods or Products to the Customer;
  5. cancel, terminate and/or suspend without Liability to the Customer the Contract and/or any other contract between the Supplier and the Customer;
  6. require that all monies owed by the Customer to the Supplier shall immediately become due and payable (and the Customer shall pay such monies on demand); and/or
  7. where the Supplier is unable to repossess the Hire Goods or Products in accordance with Condition 13.2.1 for any reason including where access is denied, they cannot be located or collection may result in a health and safety issue, terminate the Contract and charge the Customer for the replacement cost of the Hire Goods without notice.
3. Any repossession of Hire Goods and/or Products shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any antecedent breach.
4. Upon termination of a Contract the Customer shall immediately:
  1. return the Hire Goods to the Supplier or make the Hire Goods available for collection by the Supplier as requested by the Supplier; and
  2. pay to the Supplier all arrears for Rentals Charges and any other sums payable under the Contract.

## 14. Warranty

1. The Supplier warrants that the Hire Goods, Products and/or the Services (as applicable) will correspond in all material respects with the specification set out in any quotation or order acceptance at the time of Delivery and in the case of Products and Services will be free from major defects in material and workmanship for a period of 12 months from the date of Delivery provided that:
  1. any defective Hire Goods or Products must be returned to the Supplier for inspection immediately upon request by the Supplier before the Supplier will have any Liability for defective Hire Goods or Products;
  2. the Supplier shall have no Liability to the Customer if any monies due in respect of the Hire Goods, Products and/or the Services has not been paid in full by the due date for payment;
  3. the Supplier shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Hire Goods, Products and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer;
  4. the Supplier will have no Liability for fencing or associated products which blow over in severe weather conditions where erected on site by (i) the Customer, its employees, agents or sub-contractors or (ii) by the Supplier its employees, agents or sub-contractors where the Supplier has carried out such installation in accordance with and/or in agreement with the Customer's specifications;
  5. the Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is Liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer

- does not do so the Supplier shall have no Liability to the Customer; and
6. the Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.
2. The warranty in Condition 14.1 does not extend to parts, materials or equipment not manufactured by the Supplier in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier and which the Supplier hereby assigns to the Customer so far as it is able.
  3. In the event of any valid claims under Condition 14.1 being made by the Customer, the Supplier shall be entitled to repair or replace the Hire Goods or Products (or the part in question) or re-perform the Services free of charge or, at the Supplier's sole discretion, refund to the Customer the Rental Charges or the Price (or a proportionate part, as appropriate) but the Supplier shall have no further Liability to the Customer.

## 15. Limitations of liability

1. All warranties, representations, terms, conditions and duties implied by law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982), are to the fullest extent permitted by law excluded from the Contract.
2. The Supplier shall have no Liability to the Customer for any:
  1. loss of profits;
  2. damage to goodwill;
  3. pure economic loss;
  4. indirect special or consequential losses; and/or
  5. business interruption, loss of business, contracts and/or opportunity, howsoever arising in connection with or arising out of the provision, performing, finishing, functioning or use of the Hire Goods, Products and/or Services, whether in contract, strict liability, tort (including negligence) and whether the Supplier knew or had reason to know of the same, and shall not be Liable for any other damages except as provided in the Contract.
3. The Supplier's total Liability to the Customer under and/or arising in relation to any Contract shall be limited as follows:
  1. in respect of any loss or damage to the Customer's property, to the retail cost of replacement of the damaged property (provided that it shall not exceed the sum set out in Condition 15.3.2); and
  2. in respect of all other Liability, not exceed 5 times the amount of the Rental Charges and the Price under that Contract or the sum of £1,000 whichever is the higher.
4. Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
  1. liability for breach of contract;
  2. liability in tort (including negligence); and
  3. liability for breach of statutory duty; except Condition 15.3 above which shall apply once only in respect of all the said types of Liability.
5. Nothing in this Contract shall exclude or limit the Liability of the Supplier for death or personal injury due to its negligence, for fraud or fraudulent misrepresentation or for any other Liability which it is not permitted to exclude or limit as a matter of law.
6. Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall, to that extent, have no force or effect.
7. The Customer shall be Liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under the Contract.
8. The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or Liabilities suffered by the Supplier and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.

## 16. Force majeure

1. If the Supplier is prevented, hindered or delayed from or in supplying the Hire Goods, Products and/or Services in accordance with these Conditions by a Force Majeure Event the Supplier may, at its option:
  1. suspend Delivery of any Hire Goods or Products or the provision of any Services while the Force Majeure Event continues;
  2. if the Supplier has insufficient stocks to meet its commitments, apportion available stocks between its customers as it decides; or
  3. terminate any Contract so affected with immediate effect by written notice to the Customer, and the Supplier shall not be Liable for any loss or damage suffered by the Customer as a result.
2. In this Condition 16, "Force Majeure Event" means any circumstances beyond the reasonable control of the Supplier including any act of God (including lightning, storm, tempest, earthquake and naturally occurring flood); any act of war, civil disturbance, riot or unrest or terrorism; strikes, lock-outs, labour disputes or industrial disturbances; malicious damage, fire or explosion; compliance with law or governmental order, rule, regulation or direction; breakdown of plant or machinery; and circumstances where obtaining or replacing resources of any kind due to a shortage in the market place is impossible or (having regard to that degree of diligence which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances) impracticable notwithstanding the Supplier using all reasonable endeavours to obtain or replace such resources.

## 17. Notices

1. A notice under or in connection with a Contract shall be in writing and shall be delivered personally or sent by first class post or sent by facsimile transmission to the other party at its last known address or facsimile number.
2. In the absence of evidence of earlier receipt, service of a notice is deemed to have been effected as follows:
  1. if delivered personally, when left at the address referred to in Condition 17;
  2. if sent by post, two Business Days (after posting it (excluding the day of posting); or
  3. if sent by facsimile on a Business Day before 5.00 p.m. at the time of its transmission and otherwise on the next Business Day.
3. Notice by e-mail shall not be valid notice under a Contract.

## 18. General

1. The Customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under a Contract without first having obtained the Supplier's written consent. The Supplier may assign a Contract or any part of it to any person at any time.
2. If any Condition of a Contract, (or part of a Condition), is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other Conditions shall remain in force.
3. If any invalid, unenforceable or illegal Condition of a Contract would be valid, enforceable or legal if some part of it were deleted, the Condition shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
4. The failure or delay by the Supplier to exercise any right, power or remedy provided by a Contract or by law does not constitute a waiver of such right, power or remedy or a waiver of any other rights, powers or remedies. No single or partial exercise of a right, power or remedy provided by a Contract shall prevent any further exercise of the right, power or remedy or the exercise of another right, power or remedy.
5. Nothing in a Contract is intended to confer on any person any right to enforce any Condition of a Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
6. Each right or remedy of the Seller under a Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
7. These Conditions and each Contract shall be governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

Version 01, dated 2nd July 2012