MODEL CONDITIONS FOR THE HIRE AND SALE OF GOODS TO CONSUMERS AND BUSINESSES 2025 V3.1

Malcolm Herbert Plant Hire Ltd - Please see the last page for our contact details.

CLAUSE INDEX

1 INTERPRETATION
2 BASIS OF THE CONTRACT
3 THE GOODS

PART 1 TERMS APPLICABLE TO THE HIRE OF GOODS ONLY
4 HIRE OF GOODS
5 HIRE PERIOD
6 TITLE AND RISK
7 INSURANCE
8 DELIVERY AND COLLECTION
9 CARE OF THE HIRE GOODS
10 SERVICING OF THE HIRE GOODS
11 LOSS OR DAMAGE TO THE HIRE GOODS
12 TERMINATION OF THE HIRE PERIOD
13 REHIRE OF GOODS AND SERVICES
14 SITE LOCATION
15 ACCIDENTS

PART 2 TERMS APPLICABLE TO THE SALE OF GOODS ONLY
16 TITLE AND RISK
17 DELIVERY AND COLLECTION

PART 3 TERMS APPLICABLE TO BOTH THE SALE OF GOODS AND THE HIRE OF GOODS
18 PAYMENT
19 STATUTORY CANCELLATION RIGHT (ONLY) FOR CONSUMERS
20 TERMINATION
21 CONSEQUENCES OF TERMINATION
22 WARRANTIES
23 LIMITATIONS OF LIABILITY
24 PERSONNEL AND OPERATING INSTRUCTIONS FOR GOODS
25 GENERAL
26 LEGAL JURISDICTION
27 ARBITRATION
28 SEVERABILITY

The Customer's attention is specifically drawn to the provisions of Clause 23 (Limitations of liability).

1 INTERPRETATION

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

"**Conditions**" is interchangeable with the words '**terms and conditions**';

"**Consumer**" an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;

"**Commercial Terms Schedule**" means the schedule or letter issued by the Supplier to the Customer, setting out the basic commercial terms agreed between the parties, such as any hire duration and/or delivery address;

"**Contract**" means an agreement which incorporates these conditions and the Commercial Terms Schedule, made between the Customer and the Supplier for the hire or sale of Goods;

"**Customer**" means the individual, firm, company or other organisation hiring Hire Goods or purchasing Sale

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Goods;
"**Deposit**" means any advance payment required by the Supplier in relation to the Hire Goods which is to be held as security by the Supplier;
"**Force Majeure**" means any event outside a party's reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events;
"**Goods**" means any Machinery, Equipment, Product, Article, Tool, Digital Content and/or Device together with any Accessories specified in a Contract which are hired or sold to the Customer;
"**Hire Goods**" means any Goods which are hired to the Customer;
"**Hire Period**" means the period of hire, as set out in Clause 5;
"**Hire Start Date'** means as defined in Clause 5.1;
"**Liability**" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
"Lost Rental Period" a length of time when the Supplier is unable to rent out the Hire Goods;
"**Operator**" a person who works the Hire Goods, who may also have been provided by the Supplier;
"**Order**" the Customer's order for the purchase or hire of Goods, as applicable whether verbal or in writing;
"**Rental**" means the Supplier's charging rate for the hire of the Hire Goods which is agreed at the start of the Hire Period;
"**Parties**" means the Supplier and Customer
"**Sale Goods**" means any Goods which are sold to the Customer;
"**Specification**" means the specification for the Goods supplied by the Supplier to the Customer in writing [referred to in the Commercial Terms Schedule];
"**Supplier**" means the business listed at the top of these Conditions and whose full details appear at the end of these terms;
"**Total Loss**" means the Hire Goods are, in the Supplier's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

2 BASIS OF THE CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. These Conditions supersede any initial discussions both oral and/or in writing that may have taken place between the parties. Unless the Conditions have been varied in writing by the Supplier, they will exclusively apply to all transactions.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.5 The acceptance of Goods or Services whether hired or purchased implies immediate acceptance of these Conditions, unless the parties have agreed otherwise in advance and in writing.

2.6 The Supplier and the Customer do not wish any of the terms to be enforced as a result of the Contracts (Right of Third Parties) Act 1999 by anyone who is not a party to the initial Contract, unless they are a subsequent business successor of the Supplier.

2.7 Nothing in the 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. Where any terms within the Contract do not

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apply to a Consumer such terms are clearly outlined below.

2.8 In the event of any conflict and inconsistency between these terms and conditions and the Commercial Terms Schedule the Commercial Terms Schedule shall prevail.

3 THE GOODS

3.1 The Goods are as described [in the Specification].

3.2 The Supplier reserves the right to amend [the Specification] if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

3.3 The Supplier may change the Goods provided to the Customer:

3.3.1 to reflect changes in relevant laws and regulatory requirements; and

3.3.2 to implement minor technical adjustments and improvements. These changes will not adversely affect the Customers' use of the Goods.

3.4 The Supplier may also make more significant changes to the Goods, but will notify the Customer if any such significant changes are made and, if the Customer is a Consumer, and the change has an adverse impact on the Consumers' use of the Goods, the Consumer may then contact the Supplier to end the Contract and will receive a full refund.

3.5 Where the Goods are digital content, the Supplier may change the Goods to update digital content, provided that the digital content always matches the description of it that the Supplier provided to the Customer before the Customer bought it. The Supplier might ask the Customer to install these updates.

3.6 For the avoidance of doubt, these terms and conditions are not intended to cover the manufacture and sale of bespoke goods and additional conditions will apply.

PART 1: TERMS APPLICABLE TO THE HIRE OF GOODS ONLY

4 HIRE OF GOODS

4.1 The Supplier shall hire the Hire Goods to the Customer subject to the terms and conditions of the Contract.

4.2 The Supplier shall not, other than in the exercise of its rights under the Contract or any applicable law, interfere with the Customer's quiet possession of the Hire Goods.

5 HIRE PERIOD

5.1 Where hire of the Hire Goods is to a Customer who is an individual (whether a consumer or otherwise) or relevant recipient of credit as defined under Article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 e.g. (a). a partnership consisting of two or three persons not all of whom are bodies corporate, or (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership ('**Relevant Individual'**), the Hire Period shall commence on the date [specified out in writing by the Supplier] ('**Hire Start Date'**) and shall end on the earlier of (i) [the date specified in the Commercial Terms Schedule]; or (ii) the last day of the 3 month period commencing on the Hire Start Date ('**Option 1 Hire End Date'**). For the avoidance of doubt, as the Hire Period to Relevant Individuals is no longer than 3 months, the hire of any Hire Goods is not covered by the Consumer Credit Act 1974.

5.2 Where the Customer is not a Consumer or classified as a Relevant Individual, the Hire Period shall commence on the Hire Start Date and shall end on the date specified in the Commercial Terms Schedule ('**Option 2 Hire End Date'**).

5.3 On the Option 1 Hire End Date or the Option 2 Hire End Date (as applicable), the Customer shall: (i) physically return the Hire Goods into the Supplier's possession; or (ii) make the Hire Goods available for physical repossession or collection by the Supplier [in a location specified by the Supplier], as applicable.

5.4 For the avoidance of doubt, the Hire Period shall automatically end on the Option 1 Hire End Date or the Option 2 Hire End Date, as applicable and the Customer shall not be required to pay the Rental in respect of any period in which the Hire Goods are in the Customer's possession or control outside the Hire Period.

5.5 Notwithstanding Clause 5.4, If any Customer fails to comply with its obligations in this Clause 5, then it shall be liable for any financial loss which this causes the Supplier and shall indemnify the Supplier in full and

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on demand in respect of any costs, liabilities, losses and expenses, including legal fees, incurred as a result.

6 TITLE AND RISK

6.1 Ownership of the Hire Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hire Goods except the right to possession and use of the Hire Goods subject to the terms and conditions of the Contract.

6.2 The Customer does not own the Hire Goods and must not attempt to handle any issues appertaining to ownership. 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. However, the Customer may re-hire the Hire Goods to a third party provided that it has the prior written consent of the Supplier.

6.3 Risk in the Hire Goods will pass immediately to the Customer when the Hire Goods leave the physical possession or control of the Supplier. For the avoidance of doubt, this applies at the point of delivery when the Customer signs for them and at the point of return when the supplier collects the Hire Goods or when the Hire Goods are returned and the Supplier has checked them for any damages or other anomalies.

6.4 The Hire Goods shall remain at the sole risk of the Customer during the Hire Period and any further term during which the Hire Goods is in the possession, custody or control of the Customer ('**Risk Period'**) until such a time as the Hire Goods are redelivered back into the physical possession of the Supplier and have been physically inspected by the same.

7 INSURANCE

7.1 During the Hire Period and the Risk Period, the Customer MUST, at its own expense, obtain and maintain the following insurances:

7.1.1 Insurance of the Hire Goods to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;

7.1.2 Insurance for such amounts as a prudent owner or operator of the Hire Goods would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Hire Goods; and

7.1.3 Insurance against such other or further risks relating to the Hire Goods as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Customer in writing.

7.1.4 Any insurance waivers and/or insurance that has not been provided by the Supplier to the Customer, irrelevant of whether the Customer is a Consumer or Business, must be clarified and agreed with the Supplier in advance of hiring.

7.1.5 The Customer's responsibility for insuring the Goods starts at the point of collection or immediately after the Goods have been delivered by the Supplier. The Customer's insurance shall remain in force until the Goods have been collected by the Supplier or returned to the Supplier during the Supplier's working hours.

7.2 All insurance policies procured by the Customer shall be endorsed to provide the Supplier with at least twenty Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on the Supplier's request name the Supplier on the policies as a loss payee in relation to any claim relating to the Hire Period. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies. Any proceeds of any such insurance shall 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.

7.3 The Supplier may provide reasonably priced optional insurance to the Customer in respect of the Hire Goods at an additional cost to the Rental at its discretion and in accordance with separate terms and conditions.

7.4 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Hire Goods arising out of or in connection with the Customer's possession or use of the Hire Goods.

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7.5 If the Customer fails to effect or maintain any of the insurances required under this agreement, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

7.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

8 DELIVERY AND COLLECTION

8.1 Unless otherwise agreed between the Supplier and the Customer in writing, it is the responsibility of the Customer to collect the Hire Goods from the Supplier, and return them to the Supplier at the end of the Hire Period.

8.2 If the Supplier agrees to deliver Hire Goods to and/or collect the Hire Goods from the Customer it will do so at its standard delivery cost, set out in the Commercial Terms Schedule.

8.3 The Supplier shall make the Hire Goods available for collection on the date agreed and at the place specified in the Commercial Terms Schedule, as may be amended from time to time by notice in writing from the Supplier.

8.4 If the Supplier agrees to collect the Hire Goods from the Customer, the Customer shall make the Hire Goods available for collection on the last day of the Hire Period and at the place agreed in writing with the Supplier. The Supplier will collect the Hire Goods within a reasonable time of the Hire Goods being made available for collection by the Customer. In accordance with Clause 6.3, the risk in the Hire Goods shall remain with the Customer and the Customer shall remain responsible and liable for any loss, damage or theft to the Hire Goods until the Hire Goods are collected by the Supplier. For the avoidance of doubt, if the Supplier does not agree to collect the Hire Goods in accordance with this Clause, the Customer shall deliver the Hire Goods to the Supplier at the place specified by the Supplier in the Commercial Terms Schedule, on the last day of the Hire Period during the Supplier's business working hours.

8.5 Where the Customer is a Consumer, and the supply of Hire Goods is delayed by an event outside of the Supplier's control then the Supplier will contact the Consumer as soon as possible and the Supplier will take steps to minimise the effect of the delay. Provided the Supplier does this, the Supplier will not be liable for delays caused by the event, but if there is a risk of substantial delay, the Consumer may contact the Supplier to end the Contract and receive a refund for any Hire Goods which have been paid for but not received.

8.6 If the Customer is a business, any dates quoted for delivery or collection of the Sale Goods by the Supplier are approximate only, and the time of delivery or collection will not be treated as time of the essence.

8.7 The Supplier shall not be liable for any delay in delivery of the Hire Goods that is caused by a Force Majeure event or the Customer's failure to provide the Supplier with adequate delivery or collection instructions or any other instructions that are relevant to the supply or collection of the Hire Goods.

8.8 The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to utilities for the Supplier's employees, sub-contractors and/or agents to allow them to deliver or collect the Hire Goods.

8.9 If any of the delivery or collection of the Hire Goods are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation.

8.10 The Hire Goods supplied shall be deemed to be in good working order, notwithstanding any inherent faults not identifiable through reasonable examination at the time of delivery. Any issues with the Hire Goods supplied must be notified to the Supplier within 24 hours.

8.11 The Customer shall comply with all applicable legislation relating to the use of red diesel and shall not use red diesel in the Hire Goods unless a HMRC approved exemption applies (as set out in latest Excise Notice 75).

8.12 On receipt of the Hire Goods from the Customer at the end of the Hire Period, the Supplier shall carry out an inspection of the Hire Goods, to ensure that the Hire Goods do not contain any red diesel.

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8.12.1 If the Supplier determines, in its discretion, that the Hire Goods do contain red diesel including trace elements or that any further use of the Hire Goods will be in breach of applicable legislation relating to the use of red diesel the Supplier reserves the right to charge the Customer: for the cost of draining and flushing the fuel system, as may be required to remove all traces of red diesel to ensure the Hire Goods are in a condition for use by other customers using only fully duty paid diesel/biofuels; and a refill charge of white diesel to fill the Hire Goods to full tank capacity.

8.13 The Customer hereby indemnifies the Supplier in full and on demand against any and all liabilities, costs, expenses, damages and losses ('Liabilities') suffered or incurred by the Supplier arising out of or in connection with any failure by the Customer to comply with Clause 8.11 and all relevant legislation, as updated from time to time, in relation to the use of red diesel in the Hire Goods, including but not limited to, liabilities related to the following:

8.13.1 any Hire Goods being impounded by HMRC;

8.13.2 any outstanding duty payments on the Hire Goods;

8.13.3 any other legal costs, transportation and other expenditure appertaining to the return of the Hire Goods where the Hire Goods have not been drained or flushed of red diesel to a traceability level accepted by HMRC.

8.14 The Customer will notify the Supplier immediately if the Hire Goods are seized or confiscated by any third party.

9 CARE OF THE HIRE GOODS

9.1 The Customer must:

9.1.1 not remove any labels from and/or interfere with or alter the Hire Goods, their working mechanisms, components or any other parts of them and shall take reasonable care of the Hire Goods 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 by the Supplier;

9.1.2 notify the Supplier immediately after any breakdown, loss and/or damage to the Hire Goods or of any other material matters relating to the Hire Goods;

9.1.3 take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;

9.1.4 permit the Supplier at all reasonable times and upon reasonable notice to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;

9.1.5 keep the Hire Goods at all times in its possession and control and not remove the Hire Goods from the country where the Supplier is located without the prior written consent of the Supplier;

9.1.6 on the Supplier giving reasonable notice to the Customer, promptly permit or procure the right for the Supplier or its duly authorised representatives to enter the premises at which the Hire Goods may be located for the purpose of collecting the Hire Goods;

9.1.7 not without the prior written consent of the Supplier, attach the Hire Goods to any land or building so as to cause the Hire Goods to become a permanent or immovable fixture on such land or building. If the Hire Goods do become affixed to any land or building then the Hire Goods must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Hire Goods from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;

9.1.8 not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Supplier in the Hire Goods and, where the Hire Goods have become affixed to any land or building;

9.1.9 take all necessary steps to ensure that the Supplier may enter such land or building and recover the Hire Goods both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Hire Goods and a right for the Supplier to enter onto such land or building to remove the Hire Goods;

9.1.10 the Customer will not suffer or permit the Hire Goods to be confiscated, seized or taken out of its

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possession or control under any distress, execution or other legal process, but if the Hire Goods are so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Hire Goods and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

9.1.11 ensure that at all times the Hire Goods remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Hire Goods; and

9.1.12 not do or permit to be done anything which could invalidate the insurances referred to in the Contract.

9.2 The Hire Goods must be returned by the Customer to the Supplier in good working order and condition (fair wear and tear excepted) and in a clean condition together with all insurance policies, licences, registration and other documents relating to the Hire Goods.

9.3 The Customer shall be responsible for all expenses, loss (including loss of Rental) and/or damage suffered by the Supplier arising from any breakdown of the Hire Goods due to the Customer's negligence, misdirection and/or misuse of the Hire Goods including any use of the Hire Goods otherwise than in accordance with the Supplier's instructions.

10 SERVICING OF THE HIRE GOODS

10.1 The Customer shall 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.

10.2 The Customer will not do or omit to do anything which the Supplier has previously notified, failure to follow the Suppliers' instructions will or may invalidate any policy of insurance related to the Hire Goods;

10.2.1 not continue to use Hire Goods where they have been damaged and notify the Supplier immediately and;

10.2.2 where the Hire Goods require fuel, oil and/or electricity to ensure that the proper type and/or voltage is used and that, where appropriate, the Hire Goods are properly installed by a qualified and competent person.

10.3 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 a person;

10.3.1 maintain at its own expense the Hire Goods in good and substantial repair in order to keep it in as good an operating condition as it was on the Hire Start Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Hire Goods.

10.4 Subject to Clause 10.1, 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 repairs necessary to Hire Goods during the Hire Period which arise otherwise than as a result of fair wear and tear, an inherent fault and/or the negligence of the Supplier while carrying out routine maintenance and/or repairs.

10.5 The Customer must not repair or attempt to repair the Hire Goods or appoint any third party to repair the Hire Goods unless authorised to do so in writing by the Supplier.

11 LOSS OR DAMAGE TO THE HIRE GOODS

11.1 Notwithstanding Clause 9.3, if the Hire Goods are returned in damaged, unclean and/or defective state except where due to fair wear and tear and/or an inherent fault in the Hire Goods, 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 to pay the Rental, in accordance with the provisions of Clause 8.4, until such repairs and/or cleaning have been completed.

11.2 In respect of any Hire Goods which are lost, stolen or damaged beyond economic repair during the Hire Period the Customer will:-

11.2.1 for any Hire Goods less than twelve (12) months old from first registration pay to the Supplier the new replacement cost of the Hire Goods; and/or

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for any Hire Goods more than twelve (12) months old from first registration, pay for the reasonable cost to replace the Hire Goods, as stipulated by the Supplier.

11.3 The Customer shall remain liable to pay the Rental for the Hire Goods up to and including the date it notifies the Supplier that the Hire Goods have been lost, stolen and/or damaged beyond economic repair.

11.4 In addition to the obligation in Clause 11.3 to pay the Rental, from the date the Customer notifies the Supplier that the Hire Goods have been lost, stolen and/or damaged beyond economic repair until the date the Customer makes a payment to the Supplier for the replacement of the Hire Goods in accordance with Clauses 11.2.2 and 11.3.

11.5 ("**Lost Rental Period**"), the Customer shall also pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages being equal to two thirds of the Rental that would have applied for such Hire Goods during the Lost Rental Period.

12 TERMINATION OF THE HIRE PERIOD

12.1 This Clause is without prejudice to the termination rights set out elsewhere in these terms and conditions, including Clause 15.

12.2 Without prejudice to the Consumer's right to terminate set out elsewhere in the Contract or by law (where applicable) the Hire Period has a fixed duration, then subject to the provisions of Clause 15 neither the Customer nor the Supplier shall be entitled to terminate the Contract before the expiry of that fixed period unless agreed with the other party.

12.3 If the Hire Period does not have a fixed duration either of the Customer or the Supplier is entitled to terminate the Contract upon giving to the other party a period of notice in accordance with Clause 12.4.

12.4 If no period of notice has been agreed or specified either party shall be entitled to terminate the hire of the Hire Goods by giving not less than 14 days' notice to the other.

12.5 The rights set out in this Clause 12 are in addition to any rights the Customer may have under Clause 14 (and any other legal rights).

12.6 The Contract shall automatically terminate if a Total Loss occurs in relation to the Hire Goods.

13 REHIRE OF GOODS AND SERVICES

13.1 The Customer will not re-hire, sub-let, loan or permit any third party to have the use of any Hire Goods or any Services, unless it is with the prior consent of the Supplier.

14 SITE LOCATION

14.1.1 The Customer will provide the Supplier with full address and contact details for communications.

14.1.2 provide the Supplier with the location of the Hire Goods.

14.1.3 Not move the Hire Goods to another location without the consent of the Supplier.

15 ACCIDENTS

15.1 In the event of the Hire Goods being involved in an accident resulting in damage to the Hire Goods, an accident-causing property damage, actual bodily harm or fatalities that involve the Hire Goods, the Customer will immediately notify the Supplier by telephone or email within 24 hours of the said incident. In any situations where the insurance is not fully covered by the Customer's own Policy, no admission of liability or payment should be agreed, without first consulting the Supplier.

PART 2: TERMS APPLICABLE TO THE SALE OF GOODS ONLY

16 TITLE AND RISK

16.1 Ownership of any Sale Goods (except to the extent that those Sale Goods are digital content) remains with the Supplier until the earlier of:

16.1.1 all monies payable to the Supplier by the Customer for the Sale Goods have been paid in full; or

16.1.2 if the Customer is a business and the Customer resells the Sale Goods, in which case title to those Sale Goods shall pass to the Customer at the time specified in Clause 16.1.1.

16.2 Subject to Clause 16.1.1, if the Customer is a business the Customer may resell or use the Sale Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Sale Goods. However, if the Customer resells the Sale Goods before that time:

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16.2.1 it does so as principal and not as the Supplier's agent; and

16.2.2 title to those Sale Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

16.3 If the Customer is a business, at any time before title to the Sale Goods passes to the Customer, the Supplier may:

16.3.1 by notice in writing, terminate the Customer's right under Clause 16.1.2 to resell the Sale Goods or use them in the ordinary course of its business; and

16.3.2 require the Customer to deliver up all the Sale Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Sale Goods are stored in order to recover them.

16.4 Until ownership of the Sale Goods passes to the Customer, the Customer shall: -

16.4.1 hold the Sale Goods on a fiduciary basis as the Supplier's bailee;

16.4.2 maintain the Sale Goods in satisfactory condition; and

16.4.3 keep the Sale Goods insured against all risks for their full price from the time they leave the physical possession or control of the Supplier.

16.5 Risk in the Sale Goods will pass immediately to the Customer when the Sale Goods leave the physical possession or control of the Supplier.

17 DELIVERY AND COLLECTION

17.1 Unless otherwise agreed between the Supplier and the Customer in writing, it is the responsibility of the Customer to collect the Sale Goods from the Supplier. If the Supplier agrees to deliver it will do so at its standard delivery cost, set out in the Commercial Terms Schedule.

17.2 The Supplier shall make the Sale Goods available for collection on the date agreed and at the place specified in the Commercial Terms Schedule, as may be amended from time to time by notice in writing from the Supplier.

17.3 Where the Customer is a Consumer, and the supply of Sale Goods is delayed by an event outside of the Supplier's control then the Supplier will contact the Consumer as soon as possible and the Supplier will take steps to minimise the effect of the delay. Provided the Supplier does this, the Supplier will not be liable for delays caused by the event, but if there is a risk of substantial delay, the Consumer may contact the Supplier to end the Contract and receive a refund for any Sale Goods which have been paid for but not received.

17.4 If the Customer is a business, any dates quoted for delivery or collection of the Sale Goods by the Supplier are approximate only, and the delivery or collection time is not of the essence.

17.5 The Supplier shall not be liable for any delay in delivery of the Sale Goods that is caused by a Force Majeure event or the Customer's failure to provide the Supplier with adequate delivery or collection instructions or any other instructions that are relevant to the supply or collection of the Sale Goods.

17.6 The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to utilities for the Supplier's employees, sub- contractors and/or agents to allow them to deliver or collect the Sale Goods.

17.7 If any of the delivery or collection of the Sale Goods are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation.

PART 3: TERMS APPLICABLE TO BOTH THE SALE OF GOODS AND THE HIRE OF GOODS

18 PAYMENT

18.1 The amount of any Deposit and/ or Rental for Hire Goods and/ or monies for Sale Goods shall be as quoted to the Customer or otherwise as shown in the Supplier's current price list from time to time. Where a Deposit is required for the Hire Goods it shall be specified in writing by the Supplier and must be paid in advance of the Customer hiring the Hire Goods. The Supplier may, at its option, also require a payment on account of the Rental in advance of the Customer hiring the Hire Goods ('**Advance Payment'**).

18.2 In the event that the Supplier notifies the Customer that it requires an Advance Payment, the Customer

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shall pay the Advance Payment in accordance with the payment terms set out in the Contract.

18.3 The Customer shall pay the Deposit and/ or Rental for Hire Goods and/ or monies for Sale Goods and/ or any Advance Payment and/or any other sums payable under the Contract to the Supplier at the time and in the manner agreed in the Commercial Terms Schedule. The Supplier's prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable.

18.4 The Supplier may, at its absolute discretion, require the Customer to pay an additional Deposit for the Hire Goods at any time during the Hire Period in the event that the amount of the Rental for the Hire Period may exceed the amount of any Deposit already received from the Customer.

18.5 The Supplier shall refund the Deposit to the Customer if, following inspection of the Hire Goods by the Supplier at the end of the Hire Period, the Supplier is satisfied that the Customer has complied with the terms of this Contract in respect of those Hire Goods.

18.6 Payment by the Customer on time is a strict condition of the Contract. 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.

18.7 If the Customer is a business and the Customer fails to make any payment in full on the due date, or the means of obtaining the next payment proves invalid due to wrong details or a lack of funds, the Supplier may charge the Customer interest (both before and after judgment/decree) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of the Supplier's bank whichever is higher.

18.8 If the Customer is a business the Customer shall pay all sums due to the Supplier under the Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

18.9 The Supplier reserves the right to store the Customer's credit card or debit card details on its password protected customer account system and further reserves the right to use such details against future Rentals made by the Customer.

18.10 The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice.

19 STATUTORY CANCELLATION RIGHT (ONLY) FOR CONSUMERS

19.1 The provisions of this Clause 19 only apply to Customers who are a Consumer for the purpose of any hire or purchase of Goods from the Supplier.

19.2 Subject to the remainder of this Clause 19, if the Consumer is based in the UK or EU and entered into the Contract using methods of distance communications only (i.e. online, phone or email) the Consumer will have the right to change its mind within 14 days after the Goods come into its physical possession, and receive a refund.

19.3 If the Consumer wishes to change its mind in accordance with Clause 19.2 the Consumer can contact the Supplier using the contact details set out at the end of these terms. When writing to the Supplier, the Consumer can also send a cancellation form as set out in Schedule 1 below.

19.4 Where a Consumer exercises its right to cancel under Clause 19 and has made payments in advance for Goods that have not been provided to it, then the Supplier will refund these amounts to the Consumer:

19.4.1 within 14 days of receipt of the Goods which have been returned by the Consumer; or

19.4.2 (if earlier) within 14 days after the day the Consumer provides evidence that they have returned the Goods; or

19.4.3 if no Goods have been provided by the Supplier, within 14 days after the day on which the Supplier is informed of the Consumer's decision to cancel the Contract.

19.5 If the Consumer exercises the right to cancel under Clause 19:

19.5.1 The Supplier may reduce the refund of the Goods (excluding delivery costs) to reflect any reduction in the value of the Goods, if this has been caused by the Consumer's handling of the Goods which would not be permitted in a shop.

If the Supplier refunds the Consumer the price paid before the Supplier is able to inspect the Goods and later

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discovers that the Consumer has handled the Goods in an unacceptable way, the Consumer will be obligated to pay an appropriate amount specified by the Supplier.

19.5.2 If applicable, the maximum refund for delivery costs which will be paid by the Supplier will be the costs of delivery by the least expensive delivery method offered by the Supplier.

19.6 Where the Contract is with a Consumer and:

19.6.1 is for the supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities; and provides for a specific date or period of performance, the Consumer will not have a right to cancel the Contract without incurring any charge or Liability to the Supplier.

19.7 Where the Contract is with a Consumer and is for the supply of digital content, the Consumer will not have a right to cancel the Contract after the Consumer has started to download or stream the digital content.

19.8 Where a Consumer cancels the Contract under Clause 19, it shall return any Goods which the Supplier has provided to it at its own cost, unless otherwise expressly agreed in writing.

19.9 If the Consumer has another legal or contractual right to terminate the Contract, usually if the Supplier has done something wrong, then the Supplier will refund the Consumer the cost of the Goods (where applicable).

20 TERMINATION

20.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:

20.1.1 fails to make any payment to the Supplier when due without just cause;

20.1.2 breaches the terms 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;

20.1.3 persistently breaches the terms of the Contract;

20.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

20.1.5 pledges, charges or creates any form of security over any Hire Goods or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any property of the Customer, has a bankruptcy petition/petition for sequestration presented against it or the Customer takes or suffers any similar action in any jurisdiction;

20.1.6 being a company, ceases or threatens to cease to carry on business, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of its assets, any attachment order/arrestment is made against the Customer, any distress/diligence, 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;

20.1.7 appears to the Supplier (acting reasonably) due to the Customer's credit rating, to be financially incapable of meeting its obligations under the Contract; and/or

20.1.8 appears to the Supplier (acting reasonably) to be about to suffer any of the above events.

20.2 The Supplier can stop providing an ongoing subscription for digital content at any time provided that the Supplier notifies the Customer in writing at least one month in advance and it refunds any sums that the Customer paid in advance for digital content that won't be provided.

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

21 CONSEQUENCES OF TERMINATION

21.1 On expiry or termination of the Contract, however caused, the Supplier's consent to the Customer's possession of the Hire Goods shall terminate immediately.

21.2 Upon termination of the Contract the Customer shall immediately return the Goods to the Supplier or, as requested by the Supplier, make the Goods available for collection by the Supplier or its authorised representatives. The Supplier may enter, without prior notice, the site where the Goods are held and

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repossess them. The Customer hereby grants or shall procure the right for the Supplier or its authorised representative to enter the site where the Goods are held in order to collect them.

21.3 On termination or expiry of the Contract, for any reason:

21.3.1 all monies owed by the Customer to the Supplier shall immediately become due and payable by the Customer;

21.3.2 The Customer shall pay all costs and expenses incurred by the Supplier in recovering the Hire Goods or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

21.4 In the event that the Customer is a business and the Contract is terminated by the Supplier in accordance with Clause 21.1, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand a sum equal to the whole of the Rental that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Hire Period.

21.5 Any repossession of the Goods 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 breach of the Contract.

21.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

22 WARRANTIES

22.1 This Clause 22 shall only apply if the Customer is a business.

22.2 Except as set out in this Clause 22 all warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy (including the terms implied by sections 13 to 15 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.

22.3 The Supplier warrants that, on delivery, the Goods shall:

22.3.1 Conform in all material respects with the Specification;

22.3.2 Be free from material defects in design, material and workmanship; and

22.3.3 Be of satisfactory quality (within the meaning of the Sale of Goods Act 1979.

22.4 Subject to Clause 22.6, if:

22.4.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 23.3;

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

22.4.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

22.5 the Supplier shall, at its option, repair or replace the defective Goods, and/ or refund the price of the defective Goods or in respect of Hire Goods, refund the Rental (as applicable) in full or for the period that the Hire Goods were not available to the Customer, as applicable.

22.6 The Supplier shall have no Liability for the Goods' failure to comply with the warranty set out in Clause 22.3 if:

22.6.1 the Customer makes any further use of such Goods after giving notice in accordance with Clause 22.4

22.6.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

22.6.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

22.6.4 the Customer alters or repairs such Goods without the written consent of the Supplier;

22.6.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

22.6.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

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22.7 Except as provided in this Clause 22, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 22.3.

22.8 These terms and conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

23 LIMITATIONS OF LIABILITY

23.1 If the Customer is a business, and the Supplier is found to be liable in respect of any loss or damage to the Customer's property the extent of the Supplier's Liability will be limited to the retail cost of replacement of the damaged property.

23.2 If the Customer is a business, the Supplier shall have no Liability to the Customer if, without just cause, any monies due in respect of the Goods have not been paid in full by the due date for payment.

23.3 If the Customer is a business, 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 Goods after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.

23.4 If the Customer is a business, 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.

23.5 If the Customer is a business the Supplier shall have no Liability to the Customer for any of the following losses (whether direct or indirect): -

23.5.1 consequential losses;

23.5.2 economic and/or other similar losses;

23.5.3 business interruption, loss of business, contracts and/or opportunity including loss of profits and/or damage to goodwill; and/or

23.5.4 special damages and indirect losses however so arising.

23.6 If the Customer is a business, subject to Clause 23.2 to 23.5, the Supplier's total Liability to the Customer under and/or arising in relation to any Contract, whether in contract, tort (including negligence) and any statutory and/or common law duty shall not exceed 5 times the amount of the Rental or monies payable for Sale Goods (as applicable) under that Contract or the sum of £1,000 (or Euro equivalent) whichever is the higher.

23.7 If the Customer is a Consumer and the Supplier fails to comply with these terms, the Supplier is responsible for loss or damage suffered by the Consumer that is a foreseeable result of the Supplier breaching the Contract or failing to use reasonable care and skill, but the Supplier is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made, both the Supplier and the Consumer knew it might happen.

23.8 If the Customer is a Consumer, the Supplier only supplies the Goods for domestic and private use. If the Consumer uses the Goods for any commercial, business or re-sale purpose the Supplier will have no liability to the Consumer for any loss of profit, loss of business, business interruption, or loss of business opportunity.

23.9 Nothing in the Contract shall exclude or limit the Liability of either party for fraud, death or personal injury due to that party's negligence, nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

24 PERSONNEL AND OPERATING INSTRUCTIONS

24.1 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors including a plant operator and/or driver (hereafter called Operator), as though they were its own acts and/or omissions under the Contract.

24.2 Where the Supplier has provided an Operator, that individual shall work under the management and direction of the Customer and will be treated as an agent of the Customer. The Customer shall be responsible for the management and supervision of the Operator including their health and safety and will be exclusively responsible for any site costs and/or claims including damage (without prejudice to Clause 23.9) that are

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incurred as a result of using an Operator.

24.3 When operating any Hire Goods, the Customer shall ensure that any employees, agents or contractors that use the Hire Goods are, if applicable, adequately and sufficiently qualified and trained to operate the Hire Goods in accordance with all current and applicable legislation and the Supplier's own instructions.

24.4 Where operating instructions are provided by the Supplier and/or the manufacturer of the Goods, it is the Customer's responsible to ensure that its employees, agents and/or contractors are provided with all necessary information and where required management support to understand them.

24.5 The Supplier reserves the right to provide operating instructions in a variety of different formats including hardcopy, digital and/or as a QR code.

24.6 The Customer is solely responsible for providing its employees, agents and/or contractors with a suitable device for accessing any digital and QR codes.

24.7 When conditions don't allow internet access, it is the Customer's exclusive responsibility to make alternative arrangements such as downloading and providing the Operator with hardcopy instructions.

25 **GENERAL**

25.1 Each hire of an item of Hire Goods or purchase of an item of Sale Goods shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Goods or the purchase of other Sale Goods.

25.2 For crime prevention and to demonstrate proof of delivery, the Supplier reserves the right to take images of the person receiving the delivery of any Hire Goods and/or Sales Goods. The Supplier also reserves the right to take images and voice recordings of the person placing the order.

25.3 When dealing as a Consumer, if the Customer has any questions or complaints, it may contact the Supplier by telephoning its customer service team on 01994230320 or by e-mailing it at malcolmherbertplanthire@gmail.com.

25.4 If the Customer is a business 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.

25.5 If the Customer is a business no waiver by the Supplier of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

25.6 If the Customer is a business the Supplier shall have no Liability to the Customer for any delay and/or non-performance of a Contract to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event, then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

25.7 All third-party rights are excluded and no third parties shall have any rights to enforce the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999. This shall not apply to any finance company with whom the Supplier has an outstanding finance agreement relating to the Hire Goods. Such finance company shall, subject to the Supplier's consent, have the right to enforce the Contract as if they were the Supplier.

25.8 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25.9 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

26 **LEGAL JURISDICTION**

26.1 Whether the Customer is a Consumer or Business, these terms are governed exclusively by English law.

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26.2 If the Customer is a business, the Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of [England and Wales].

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

26.4 If the Customer is a Consumer, wherever the Consumer lives the Consumer can bring a claim against the Supplier in the English courts. If the Consumer lives in Wales, Scotland or Northern Ireland, the Consumer can also bring claims against the Supplier in the courts of the country the Consumer lives in. The Supplier can also claim against the Consumer in the court of the country the Consumer lives in. Nothing in these terms affects the Consumer's rights to rely on such mandatory provisions of local law.

26.5 Advice about Customers' legal rights where they deal as a Consumer is available from their local Citizens' Advice Bureau or Trading Standards office, or if based in the Republic of Ireland your local office of the Director of Consumer Affairs or Citizens Information Centre. Nothing in these terms and conditions will affect these legal rights.

26.6 If a Consumer is not happy with how the Supplier has handled any complaint, Consumers can submit a complaint to the Citizens Advice Bureau via their website at https://www.citizensadvice.org.uk/. The Citizens Advice Bureau will not charge the Consumer for making a complaint and if the Consumer is not satisfied with the outcome the Consumer can still bring legal proceedings.

27 ARBITRATION

27.1 Arbitration is available to both Consumer and Business Customers, this is called alternative dispute resolution, a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court.

27.2 All parties to the Contract must agree to Arbitration;

27.3 If Arbitration is agreed, the following Clauses shall apply;

27.4 Any dispute, difference, or disagreement between the Parties arising out of or in connection with any dispute shall, if agreed by all parties to the Contract, be referred to Arbitration in accordance with this Clause 27.

27.5 The Customer and Supplier shall consult The Chartered Institute of Arbitrators https://www.ciarb.org/dispute-services/dispute-appointment-service/ and agree an appropriately qualified arbitrator.

27.6 The seat of the arbitration shall be in London.

27.7 The arbitration shall be governed by English law.

27.8 The language of the arbitration shall be English.

27.9 The Parties shall jointly agree on, and jointly appoint, the arbitrator not later than 30 days after the service of a request in writing by either Party on the other Party requesting it to do so; but

27.10 if the Parties fail to agree upon and appoint an arbitrator within the period Clause 27.9, either Party may apply to the Law Society of England & Wales, requesting that the President for the time being of the Law Society of England & Wales to appoint an arbitrator, and in that event, the Parties shall accept that appointment.

28 SEVERABILITY

28.1 In the event that one or more of the provisions of these terms and conditions is or are found to be unlawful, invalid, or otherwise unenforceable, that or those provision(s) shall be deemed severed from the remainder of the Agreement. The remainder of these Clauses shall be valid and enforceable.

29 SUPPLIER

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