

## HSS SKIP HIRE AGREEMENT

### TERMS AND CONDITIONS FOR SUPPLY OF SKIP HIRE EQUIPMENT SERVICES

#### 1. Definitions

In the Agreement and each Contract:

- 1.1. the following words and expressions shall, unless the context or circumstances require otherwise, have the meanings assigned to them below:

**“Account”** means the account in the name of the Hirer under which the Hirer can order the provision of Services by HSS to the Hirer;

**“Additional Charges”** means charges applicable to the provision of the Services which are charged in addition to the Charges including, as applicable, delivery costs, costs incurred in failed deliveries or collections, fuel, insurance charges, and any other additional costs referred to in these Terms and Conditions; failure to meet an agreed declaration of waste type and skip size as previously agreed between HSS and the Hirer, as well as overfilling of the skip, will result in additional charges;

**“Additional Terms”** means the terms that relate to any hire of Equipment that are in addition to or in substitution for these Terms and Conditions as may be set out in the Agreement;

**“Agreement”** means the agreement between HSS and the Hirer set out in a written agreement to which these Terms and Conditions are attached or which refer to these Terms and Conditions, or, if no written agreement has been entered into, the agreement between HSS and the Hirer created in accordance with clause 2.1;

**“Business Day”** means a day (other than a Saturday, Sunday or public or bank holiday) on which the banks are ordinarily open for business in the City of London;

**“Charges”** means the charges set out in the Agreement or if no charges are detailed in the Agreement, HSS standard charges for the relevant Services in force from time to time. Details of the charges and Additional Charges shall be available on request;

**“Commencement Date”** means the earlier of the date set out in the Agreement, the date of the creation of an Account, if applicable or where no such dates apply, the day on which the first hire of the Equipment commences;

**“Confidential Information”** means (a) in relation to HSS, all information in respect of the business of HSS or the Supplier including know-how and other matters connected with the Services, information concerning HSS’ or the Supplier’s relationships with actual or potential clients, customers or suppliers and the needs and requirements of HSS or the Supplier and of such persons and any other information which, if disclosed, will be liable to cause harm to HSS or the Supplier; and (b) in relation to the Hirer, all information in respect of the business of the Hirer including know-how and other matters connected with the Services, information concerning the Hirer’s relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Hirer and of such persons and any other information which, if disclosed, will be liable to cause harm to the Hirer;

**“Contract”** means the contract for the supply of Services by HSS to the Hirer as requested in each Order during the Term which shall be formed of these Terms and Conditions, any applicable Additional Terms and the Order formed in accordance with clause 2;

**“Equipment”** means the items of equipment of the Supplier to be hired by the Hirer as listed in the Order, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it to be supplied as part of the Services to be provided by HSS;

**“Force Majeure”** means: a) act of God; b) war, insurrection, riot, civil commotion, act or threat of terrorism; c) lightning, earthquake, fire, flood, storm, or extreme weather condition; d) theft, malicious damage; e) strike, lockout, industrial dispute (whether affecting the

workforce of HSS and/or any other person); f) inability to obtain essential supplies or materials; g) any failure or default of a supplier or sub-contractor of HSS, including supplies of power, fuel, transport, equipment, raw materials or other goods or services; or h) any event or circumstance to the extent it is beyond the reasonable control of HSS;

**“Hire Period”** means the period of hire of the Equipment in respect of each Contract as set out in the Order if not terminated earlier in accordance with clause 16;

**“Hirer”** means the person or company set out as such in the Agreement;

**“HSS”** means the relevant HSS company set out in the Agreement;

**“Insolvent”** means where the Hirer ceases to trade, is unable to pay its debts as they fall due or where the Hirer becomes, or in the reasonable opinion of HSS, is likely to become, insolvent or bankrupt including where the Hirer has a receiver, administrator or provisional liquidator appointed; is subject to a notice of intention to appoint an administrator; passes a resolution for its winding-up has a winding up order made by a court in respect of it; enters into any composition or arrangement with creditors or has any steps or actions taken in connection with any of these procedures;

**“Intellectual Property Rights”** means all intellectual and industrial property rights whether registered or unregistered (including know how and rights to prevent passing off) in the United Kingdom and all other countries in the world and together with all applications, renewals and extensions of the same;

**“Order”** means the individual orders for the hire of Equipment placed by the Hirer from time to time during the Term in accordance with clause 2;

**“Replacement Cost”** means the cost of replacing any item of Equipment or part of it including but not limited to the cost of the item or part of it, any unpaid Charges that would otherwise have been paid by the Hirer were it not for such replacement, and a reasonable administrative charge to be determined by HSS covering the cost to HSS of administering the replacement;

**“Services”** means the hire of Equipment to the Hirer by the Supplier whereby HSS acts as agent for the Hirer in sourcing the Equipment;

**“Site”** means the Hirer’s primary business premises unless specified otherwise in the Agreement or in an Order or any other premises at which the Equipment is located;

**“Supplier”** means the third party supplying the Equipment hired pursuant to this Agreement;

**“Supplier Agreement”** means the terms and conditions under which the Supplier supplies the Equipment hired pursuant to this Agreement;

**“Terms and Conditions”** means these terms and conditions together with any Additional Terms that apply to an individual Order;

**“Termination Date”** means the date on which the Agreement expires or is terminated for whatever reason;

**“Working Hours”** are from 7.30 am to 5.30 pm on a Business Day unless specified otherwise in writing by HSS.

1.2. unless the context otherwise requires:

- (a) references to the singular include the plural and vice versa and references to any gender include every gender;
- (b) references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

- (c) references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- (d) an obligation on a party to procure or ensure the performance or standing of another person shall be construed as a primary obligation of that party; and
- (e) any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

## **2. Appointment, Formation and Duration**

- 2.1. The signature of the written Agreement by both parties or, if no written Agreement has been entered into, the creation of an Account or the placing of the first Order, shall be deemed to form an Agreement on the basis of these Terms and Conditions and any Additional Terms.
- 2.2. The Agreement shall commence or shall be deemed to have commenced on the Commencement Date and shall continue until the expiry of any period set out in the Agreement (unless terminated early in accordance with clause 16) or if no period is set out in the Agreement until the Agreement is terminated in accordance with clause 16 (“**Term**”).
- 2.3. Subject to clause 3.2, the Hirer appoints HSS to supply the Services on a non-exclusive basis throughout the Term.
- 2.4. Each Contract for the supply of the Services will be subject to these Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Hirer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
- 2.5. From time to time during the Term the Hirer may place Orders. Such Orders shall be in the form of a written order, order made over the telephone or internet or such other method as HSS deems acceptable from time to time to form such Orders.
- 2.6. Each Order placed by the Hirer during the Term will be deemed to be an offer by the Hirer to purchase the Services subject to these Terms and Conditions. A Contract will be formed between HSS and the Hirer for the provision of Services set out in the Order, when the Order is accepted by HSS.
- 2.7. Nothing in these Terms and Conditions shall require HSS to accept any Order placed by the Hirer. HSS reserves the right to refuse to hire Equipment to the Hirer for any reason whatsoever at its sole discretion.
- 2.8. The placing of any Order and/or the acceptance of delivery of the Equipment shall be deemed conclusive evidence of the Hirer’s acceptance of these Terms and Conditions. Any addition or amendment to any Order will create a new Order.
- 2.9. Each Contract shall continue for the Hire Period unless terminated earlier in accordance with clause 16.
- 2.10. It is the Hirer’s responsibility to ensure that each Order is accurate and complete and that the Equipment is suitable for the Hirer’s requirements.

## **3. Supply of the Services**

- 3.1. Each party shall use its reasonable endeavours to identify, and obtain as relevant, all consents necessary for the fulfilment of its obligations under any Contract. HSS shall not be in breach of the Agreement and/or any Contract if it cannot supply any or all of the Services or carry out any of its other obligations under the Agreement and/or any Contract if the Hirer fails to obtain such consents as may be required to

allow HSS to provide the Services and otherwise carry out its obligations under the Agreement and/or any Contract.

- 3.2. The Hirer acknowledges and agrees that the Equipment is not owned and/or supplied by HSS and HSS is acting as the Hirer's agent in sourcing the Equipment. In respect of the Equipment the Hirer acknowledges and agrees that:
- 3.2.1. HSS provides no warranty in respect of the Equipment and the Hirer may only benefit from any warranty as the Supplier may give in relation to the Equipment;
  - 3.2.2. the Equipment may not be delivered by HSS and HSS is not bound to check the Equipment prior to delivery. The Hirer shall ensure that it carries out adequate inspection of the Equipment on delivery and shall note any shortages or damages on the Contract or delivery documents;
  - 3.2.3. the Equipment may not be delivered with operating and safety guides and the Hirer is responsible for ensuring that it satisfies itself of the safe operation of the Equipment;
  - 3.2.4. the Charges for the Services will be payable by the Hirer in accordance with the payment terms set out in these Terms and Conditions. In addition HSS may invoice the Hirer for any Additional Charges which may be levied against HSS by the Supplier in respect of the termination of the Contract in respect of the Equipment;
  - 3.2.5. delivery and/or collections provided by any agent of HSS are chargeable in full; and
  - 3.2.6. the Hirer shall allow the collection of the Equipment in accordance with these Terms and Conditions, save where any specific collection or return requirements are notified to the Hirer by HSS or the Supplier. The Hirer shall not return any Equipment to any HSS premises without prior agreement.
- 3.3. The Hirer acknowledges that the Equipment remains at all times the property of the Supplier and title and ownership shall not pass to the Hirer. The Hirer has no right, title or interest in the Equipment except that it is hired to the Hirer in accordance with the terms of the Agreement. On termination of each Contract for whatever reason or in the event that the Hirer becomes Insolvent, all Equipment at such time in the possession of the Hirer shall immediately become due for return to HSS or the Supplier (as applicable) and the Hirer acknowledges that HSS may take all reasonable measures to recover the Equipment without prejudice to any rights and remedies which may have accrued to HSS up to and including the Termination Date.
- 3.4. HSS shall not, other than in the exercise of its rights under any Contract or applicable law, interfere with the Hirer's quiet possession of the Equipment during any Hire Period.

#### **4. Equipment**

- 4.1. Subject to clause 2.10, HSS will use reasonable endeavours to ensure that all Equipment complies in all material respects with the Hirer's requirements before delivering it to the Hirer.
- 4.2. The Hirer shall immediately notify HSS of any loss, accident, damage or defect in the Equipment or if the Hirer considers that the Equipment may cause damage to the Hirer's property and HSS shall not be liable for any damage to the Hirer's property resulting from the Hirer's failure to notify in accordance with this clause.
- 4.3. The Hirer shall during each Hire Period during the Term:

- 4.3.1. keep the Equipment in good repair and condition, (fair wear and tear only excepted) save that the Hirer shall not repair or allow any third party to repair the Equipment;
- 4.3.2. not make any alteration to the Equipment and shall not remove any existing components from the Equipment without HSS' prior written consent;
- 4.3.3. where the Equipment requires fuel, oil and/or electricity, ensure that the proper type and/or voltage is used and that, where appropriate, the Equipment is properly installed by a qualified and competent person;
- 4.3.4. only use the Equipment for its proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided to or supplied to the Hirer by the Supplier or HSS and, where the Equipment will be used to drive over land, ensure that all ground conditions are suitable for driving over;
- 4.3.5. ensure that the Equipment is kept and operated in a suitable environment;
- 4.3.6. keep the Equipment in the Hirer's possession and control and take reasonable measures to protect the Equipment from theft, damage and/or other risks, including if Equipment is on the Hirer's premises outside Working Hours or on a day other than a Business Day;
- 4.3.7. not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of HSS or the Supplier in the Equipment or invalidate any of the Supplier's or HSS' insurance;
- 4.3.8. not allow the Equipment to be used dangerously or unlawfully;
- 4.3.9. not remove, deface or cover up the Supplier's name plate or mark on the Equipment indicating that it is the Supplier's property;
- 4.3.10. comply with all laws, statutory requirements and applicable regulations in using the Equipment including under the Health & Safety at Work Act 1974 and all other health and safety legislation which relates to the use of the Equipment;
- 4.3.11. not without the prior written consent of HSS, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building;
- 4.3.12. not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process. If the aforementioned occurs then the Hirer shall use its best endeavours to procure the release of the Equipment;
- 4.3.13. ensure that the Equipment is used by such employees of the Hirer (if any) that are reasonably qualified or skilled in the use of such Equipment;
- 4.3.14. not, without the prior written consent of HSS, part with control of or in any way acquire or dispose of or otherwise assign or transfer any of the Equipment or any interest in any of the Equipment, including for the avoidance of doubt, re-hire or onward hire; and

- 4.3.15. not without the prior written consent of HSS in any way create or permit the creation of any encumbrance (including any charge or lien) security interest or type of preferential arrangement on or over the Equipment.
- 4.4. The Hirer shall grant or shall procure that the Supplier, HSS or its authorised representatives are granted access to the Site at all such reasonable times on HSS or the Supplier giving the Hirer reasonable notice to:
- 4.4.1. inspect the Equipment and ensure the Hirer's compliance with its obligations under the Agreement and/or any Contract; and
- 4.4.2. carry out any inspections or repairs of the Equipment as provided for under the Agreement.
- 4.5. Where the Equipment is supplied with fuel the Hirer shall be responsible for returning the Equipment with the same or greater amount of fuel and HSS may charge the Hirer for any refuelling costs if the Hirer fails to comply with this clause, at such rates as may be notified to the Hirer from time to time, even if this is after the submission of the final invoice.
- 4.6. The Hirer shall be liable to HSS for:
- 4.6.1. all costs and expenses in respect of rectifying any damage to the Equipment (fair wear and tear excepted) which occurred during the period in which the Equipment was at the Hirer's risk in accordance with clause 5.5. Such costs and expenses shall be confirmed to the Hirer by HSS, subject to supporting documentation; and
- 4.6.2. the Replacement Cost in respect of lost or stolen Equipment and/or Equipment which is beyond economical repair in accordance with clause 10.2.2.
- 4.7. HSS' compliance with any request for any Equipment is subject to availability of such Equipment from the Supplier. HSS shall not be in breach of the Agreement or any Contract for any failure to supply such Equipment due to unavailable stock.
- 4.8. The charges applicable for the Equipment shall be available on request by the Hirer and unless otherwise stated shall be exclusive of any Additional Charges in respect of the Equipment set out in the Agreement. Unless otherwise agreed, Equipment will not be subject to any discounts or reductions.
- 4.9. The Hirer shall be responsible for any damage to or loss or theft of the Equipment.

## **5. Delivery and Collection**

- 5.1. HSS shall use its reasonable endeavours to procure delivery by the Supplier of the Equipment to (the) agreed delivery location(s) during Working Hours on the date or within the period specified in the Purchase Order or Supplier Agreement.
- 5.2. Time of delivery of the Equipment and/or performance of the Services will not be of the essence. If, despite HSS' reasonable endeavours, HSS is unable for any reason to procure any delivery or performance on the specified date, HSS will be deemed not to be in breach of the Agreement or any Contract, nor (for the avoidance of doubt) will HSS have any liability to the Hirer for direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery and/or performance except as set out in this clause. Any delay in delivery of the Equipment and/or performance of the Services will not entitle the Hirer to cancel the Contract unless and until the Hirer has given 24 hours' notice to HSS requiring the delivery and/or performance to be made and the delivery and/or performance has not occurred

within that period. If the Hirer cancels the Contract in accordance with this clause 5.2, then:

- 5.2.1. HSS will refund to the Hirer any sums which the Hirer has paid to HSS in respect of that Contract or part of the Contract which has been cancelled less any sums which HSS has paid (or is obliged to pay) to the Supplier and is unable to recover from the Supplier; and
  - 5.2.2. the Hirer will be under no liability to make any further payments in respect of that Contract or part of the Contract which has been cancelled.
- 5.3. The Hirer shall at its sole expense provide sufficient, access to and from the Site, unloading space, materials, facilities and access to employees and contractors to enable the Supplier or HSS to carry out the Services, including delivery of the Equipment to the Site, in a safe manner. The Hirer shall ensure that the Site where the Equipment is to be delivered and/or Services to be performed is, where necessary, cleared and prepared before delivery or the performance of the Services is to commence. It is the Hirer's responsibility to ensure that the Supplier or HSS has sufficient access to be able to deliver the Equipment and HSS shall not be in breach of the Agreement and/or any Contract if it is unable to procure delivery of the Equipment to the Site in a safe manner. Additional charges shall apply for any redelivery or attempted redelivery in such circumstances in accordance with clause 5.10.
- 5.4. Delivery shall include the off loading of Equipment from the Supplier's delivery vehicle at the Site. The Hirer shall procure that a duly authorised representative of the Hirer shall be present at the delivery point of the Equipment. Acceptance of delivery of the Equipment by such representative shall constitute conclusive evidence that the Hirer has accepted such delivery.
- 5.5. Unless otherwise agreed by the parties in writing, risk in the Equipment shall pass to the Hirer on delivery in accordance with clause 5.3. Risk in the Equipment will return to the Supplier on the date of collection of the Equipment agreed between the Supplier or HSS and the Hirer (provided that the Supplier or HSS (as applicable) is able to collect the Equipment on that date) or the date the Equipment is returned to HSS.
- 5.6. During the period when the Equipment is at the Hirer's risk as provided in clause 5.5, the Hirer shall insure each item of Equipment to a value of no less than its full Replacement Cost against any loss, damage, fire or theft of the Equipment and shall maintain appropriate public liability insurance. The insurance cover will be maintained with a reputable insurer. The Hirer shall, on request, provide confirmation to HSS that the relevant insurance policies are in place.
- 5.7. The Hirer shall, if agreed between the parties in writing, make the Equipment available for collection by the Supplier or HSS on the date and time agreed between the parties at the end of the Hire Period and/or if the Supplier or HSS requires the return of the Equipment at any point during the Term to carry out its obligations under the Agreement. The Hirer shall grant or procure the grant of access to the Site to the Supplier or HSS to allow the collection of the Equipment and shall comply with its obligations set out in clause 5.3 in respect of such collection.
- 5.8. If the Hirer does not make the Equipment available for collection on the date for collection agreed between the Supplier or HSS and the Hirer or the Supplier or HSS is not able to ensure the safe collection of the Equipment due to the Hirer's act or omission including the failure to comply with its obligations under any Contract and/or the Agreement, the Hire Period shall be extended automatically until the Equipment is collected. The Charges and any Additional Charges shall continue to apply to such extended Hire Period.
- 5.9. If the Equipment is unavailable for inspection or collection within 5 days of the scheduled date for inspection or collection as agreed between HSS and the Supplier or Hirer, the Equipment shall be deemed to be lost and the Hirer shall be responsible for the

replacement of the Equipment as set out in clause 10.2.2 and the Charges and any Additional Charges will continue to apply until settlement is made to the satisfaction of HSS.

- 5.10. If the Supplier or HSS is unable to deliver or collect the Equipment on the dates agreed it may charge the Hirer all such reasonable additional costs and expenses that it may incur in respect of such inability to deliver or collect including additional delivery charges for any re-delivery of the Equipment (including any third party costs) and any storage charges.

## **6. Quantity**

- 6.1. If the Supplier or HSS delivers a quantity of the Equipment less than the quantity specified in the Order, the Hirer shall agree the shortages with the Supplier or HSS and note the same on the delivery document. The Hirer may elect to:
- 6.1.1. refuse to take delivery of or reject the Equipment and the Hirer shall have liability for delivery charges only; or
  - 6.1.2. take delivery of and keep the lesser quantity of Equipment or any part thereof and pay for them at the rate specified in the Order subject to a pro-rata reduction.
- 6.2. If the Supplier or HSS delivers a quantity of Equipment greater than the quantity specified in the Order, the Hirer may elect to accept and pay for all the Equipment delivered at the Charges or accept and pay for the quantity specified in the Order and reject the excess.

## **7. Variation**

- 7.1. Neither party may make any variations to the Services or any Contract or the Agreement without the prior written consent of the other party. The Hirer shall have the right by notice in writing to request a variation to the Services. HSS shall not be under any obligation to accept such request.

## **8. Charges and Payment**

- 8.1. The Hirer shall pay the Charges and any Additional Charges for the hire of the Equipment in accordance with these Terms and Conditions.
- 8.2. HSS may, prior to the hire of the Equipment, require the Hirer to pay such deposit as is considered appropriate by HSS as notified to the Hirer at the time the Equipment is ordered ("**Deposit**") and/or require the Hirer to provide details of any valid credit or debit card as a Deposit. Such Deposit shall be a deposit against default by the Hirer of payment of any Charges or any loss of or damage caused to the Equipment including any Replacement Cost. If the Hirer fails without due cause to make any payment of the Charges or any Replacement Cost or causes any loss or damage to the Equipment (in whole or in part), then HSS shall be entitled to apply the Deposit or such further sums as are necessary against such default, loss, Replacement Cost or damage either by deduction from the Deposit sum and/or deduction of such further sums as are necessary from the credit or debit card (as applicable). Any Deposit sum (or balance thereof) shall be refundable at the end of the Hire Period. The Deposit shall not act as a limitation of the Hirer's liability to HSS to pay the Charges for any damage or loss to the Equipment or to pay any Replacement Cost.
- 8.3. Any sum payable under the Agreement is exclusive of VAT (and any other similar or equivalent taxes, duties, fees and levies) which shall be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.
- 8.4. The Charges are exclusive of any Additional Charges. Where Charges are quoted on a daily basis, these shall include any and all weekends and public and bank holidays which fall within the Hire Period.



- 8.5. The Charges will be payable by the Hirer to HSS for the duration of the Hire Period and any extension arising as a result of the Equipment not being made available by the Hirer for collection by HSS or the Supplier on the agreed date and at the agreed time for collection of the Equipment.
- 8.6. Save as otherwise expressly provided in the Agreement or required by law, all payments to be made by either party under the Agreement shall be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 8.7. If the Hirer is required in accordance with the relevant tax laws to make any withholding in respect of taxes from payments made or due to HSS, it shall provide HSS with a certificate evidencing that withholding has been made and properly accounted for to the relevant tax authorities and shall provide HSS with such assistance as may reasonably be required to enable HSS to reclaim such taxes.
- 8.8. HSS shall use its reasonable endeavours to ensure that all invoices shall bear the relevant Order number and shall be submitted for payment to the address stated in the Order and enclose such supporting documentation as the Hirer may reasonably request. If HSS considers such a request to be unreasonable, the Hirer will either amend the request or accept such reasonable administrative charges as may be levied by HSS. Failure of HSS to comply with this clause 8.8 shall not permit the Hirer to withhold payment or reject HSS' invoice.
- 8.9. Unless otherwise agreed by the parties in writing or in the Supplier Agreement, all invoices submitted by HSS shall be paid by the Hirer within a period of thirty (30) days from the end of the month in which the relevant invoice is issued.
- 8.10. Time shall be of the essence in respect of the payment timescales set out in clause 9.9 and any timescales which may be substituted for them by the agreement in writing of the parties.
- 8.11. If any sum payable under the Agreement is not paid on or before the due date for payment, HSS shall be entitled to charge the Hirer interest on that sum at 4% per annum above the base lending rate from time to time of Barclays Bank plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.
- 8.12. No payment made by the Hirer shall in any way impair or restrict any rights or remedies the Hirer may have under the Agreement or otherwise.
- 8.13. If HSS has granted a credit account to the Hirer then payment of any Charges or any other sums due under the Contract, including VAT, shall be made in full cleared funds by the end of the month following the date of the invoice.
- 8.14. The Hirer should notify HSS in writing of any queries concerning invoices within 14 days of the invoice date. HSS will not grant an extension to credit account payment terms for unresolved invoice queries that have been notified after 14 days have elapsed from the invoice date.
- 8.15. Should any portion of an account fall overdue then the total account will become due on demand. The Hirer will be liable for reasonable legal charges incurred by HSS in the recovery of amounts due or the recovery of the Equipment. In addition HSS may charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1988 at Bank of England base rate plus 4% and/or may suspend further services to the Hirer.
- 8.16. Where HSS has granted a credit account to the Hirer, HSS may set a reasonable credit limit. HSS reserves the right to terminate or suspend the Contract if allowing it to continue would result in the Hirer exceeding its credit limit or the Hirer has already exceeded its credit limit.

## **9. Performance Failure**

- 9.1. If HSS has failed to supply the Services (or any part thereof), then save as otherwise set out in the Agreement, provided that the failure was not caused by the act or omission of the Hirer and/or the Hirer's failure to comply with its obligations and restrictions under the Agreement, the Hirer shall be entitled (without prejudice to any other rights or remedies it may have), at its option:
- 9.1.1. to require HSS to remedy such breach by re-supplying the relevant Services at no additional charge; or
  - 9.1.2. to require HSS to repay or credit to the Hirer that part of the Charges paid by the Hirer relating to the relevant Services that HSS has failed to supply.

## **10. Warranties**

- 10.1. Pursuant to clause 3.2.1, HSS provides no warranty in respect of the Equipment and the Hirer may only benefit from any warranty as the Supplier may give in relation to the Equipment. HSS shall use all reasonable endeavours to pass to the Hirer the benefit of any warranties given by the Supplier to HSS in relation to the Equipment.
- 10.2. The Hirer warrants that:
- 10.2.1. it is solely and exclusively responsible for the safe and correct operation of the Equipment by competent and appropriately trained persons not under the influence of alcohol or drugs, complying with all applicable laws, regulations and statutory requirements the Supplier operating and safety instructions supplied when operating the Equipment and for its constant supervision of the Equipment when operating within the range of children; and
  - 10.2.2. it is responsible for the security of the Equipment whilst in its possession, and it will take all appropriate measures to secure the Equipment at the Site when not in use and will pay HSS (or the Supplier at the direction of HSS) for any Equipment which is lost, stolen or in HSS' reasonable opinion or the opinion of its or the Supplier's insurer(s), damaged beyond repair. at full replacement value of such Equipment, such value to be confirmed to the Hirer by HSS, subject to supporting documentation. Replacement value shall be determined as the manufacturer's retail price at the time of loss, plus all ancillary costs, including but not limited to administration cost and lost hire time costs.

## **11. Limitation of Liability**

- 11.1. Neither party excludes its liability, if any, to the other party for:
- 11.1.1. death or personal injury resulting from its negligence or by the negligence of a person for whom it is vicariously liable;
  - 11.1.2. any breach of its obligations implied by section 2 of the Supply of Goods and Services Act 1982;
  - 11.1.3. for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or
  - 11.1.4. any matter which it would be illegal for it to exclude or to attempt to exclude its liability.
- 11.2. Subject to clause 11.1, HSS' maximum aggregate liability for loss of or damage to tangible property caused by its negligence or act or omission shall be limited to five million pounds (£5,000,000).

11.3. Subject to 11.1

HSS' maximum aggregate liability in respect of Equipment arising out of or in connection with the Agreement and/or any Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of HSS' obligations under the Agreement but excluding any liability which falls within the terms of clause 11.1 and 11.2, shall be limited in respect of each Contract, to the Charges and other sums paid or payable in respect of that Contract as specified in the Order.

11.4. Subject to clause 11.1, neither party shall have any liability to the other party for any:

- 11.4.1. loss of profit (direct or indirect);
- 11.4.2. loss of revenue, loss of production or loss of business (in each case whether direct or indirect);
- 11.4.3. loss of goodwill, loss of reputation, loss of opportunity and/or loss of operation (in each case whether direct or indirect);
- 11.4.4. loss of anticipated saving or loss of margin (in each case whether direct or indirect);
- 11.4.5. liability of the other party to third parties (whether direct or indirect); or
- 11.4.6. indirect, consequential or special loss,

arising out of or in connection with the Agreement and/or any Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of that party's obligations under the Agreement and/or any Contract and/or any defect in or breakdown of the Equipment or the Equipment's unsuitability for the Hirer's intended purpose.

11.5. Clause 11.4 shall not limit or exclude HSS' ability to claim against the Hirer in respect of:

- 11.5.1. the ability to recover the Charges applicable for any remaining Hire Period on early termination of any Contract as set out in these Terms and Conditions; and/or
- 11.5.2. costs and expenses in respect of recovery of the Equipment as set out in these Terms and Conditions.

11.6. The Agreement and/or the Contracts set out the full extent of HSS' obligations and liabilities in respect of the Equipment and the Services including the hire of Equipment to the Hirer. There are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Hirer except as specifically stated in the Agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Agreement, whether by statute, common law or otherwise, is expressly excluded.

## 12. Intellectual Property Rights

12.1. No right of licence is granted to the Hirer in respect of the Intellectual Property Rights of HSS or the Supplier, except the right to use the Equipment and/or the Services in the Hirer's ordinary course of business.

## 13. Confidentiality

13.1. Each party will keep secret and confidential all Confidential Information which is disclosed or obtained in connection with the Agreement and/or any Contract and shall not use

nor disclose the same save for the purposes of the Agreement and/or any Contract or with the prior written consent of the relevant party.

- 13.2. Where disclosure is made to any employee, consultant, sub-contractor or agent, who needs to know the Confidential Information for the purposes of the Agreement and/or any Contract it shall be done subject to the obligations set out in the Agreement and each party shall procure that any such employee, consultant, sub-contractor or agent complies with such obligations.
- 13.3. The obligations of confidentiality in this clause 13 shall not extend to any matter which:
- 13.3.1. is in or enters the public domain other than as a result of a breach of the obligations of confidentiality under the Agreement; or
  - 13.3.2. is independently disclosed by a third party entitled to disclose the same; or
  - 13.3.3. is required to be disclosed under any applicable law, or by order of a court, governmental body or authority of competent jurisdiction.
- 13.4. Each party shall on demand and on the termination of the Agreement return to the other party all Confidential Information belonging to the other party that it has in its possession.

## **14. Information**

- 14.1. Either party shall on request from the other supply such information as is reasonably required in relation to the performance of any obligation under the Agreement.

## **15. Force Majeure**

- 15.1. If either party is affected by Force Majeure it shall immediately notify the other party in writing.
- 15.2. If in either party's reasonable opinion an event of Force Majeure results in disruption of the Services and such disruption continues for more than ninety (90) days, then either party may terminate the applicable Order affected by the Force Majeure and/or the Agreement immediately on written notice to the other.
- 15.3. HSS shall not be in breach of the Agreement and/or any Contract or otherwise liable to the Hirer for any failure to perform or delay in performing the Services or any of its obligations under the Agreement and/or any Contract to the extent that such failure or delay is due to Force Majeure in respect of itself or the Supplier.
- 15.4. If HSS is the party affected by the Force Majeure event, the Hirer shall continue to pay the Charges in respect of any Services which HSS continues to supply notwithstanding the occurrence of the Force Majeure event. If the Hirer is the party affected by the Force Majeure event, the Hirer shall continue to pay the Charges in accordance with the provisions of clause 9.

## **16. Termination**

- 16.1. Minimum Hire Periods may apply to the Equipment at the discretion of HSS. Subject to the remaining provisions of this clause 16, the Hirer may not terminate any Contract in respect of the hire of Equipment prior to the expiry of any minimum Hire Period. Where the Hirer purports to cancel or terminate the Contract prior to the expiry of any minimum Hire Period, the full Charges shall continue to be chargeable for the remainder of the minimum Hire Period.
- 16.2. Either party may, immediately on giving written notice to the other party, terminate the Agreement and/or the relevant Contract without payment of compensation if the other party:

- 16.2.1. commits a material breach of the Agreement or any Contract which is incapable of remedy;
  - 16.2.2. commits a material breach of the Agreement or any Contract which can be remedied but fails to remedy that breach within seven (7) days of a written notice setting out the breach and requiring it to be remedied being given by the other party;
  - 16.2.3. purports to assign any of its obligations under the Agreement without the prior written consent of the other party;
  - 16.2.4. becomes Insolvent and each party shall notify the other party immediately upon becoming Insolvent; and/or
  - 16.2.5. ceases to carry on business.
- 16.3. Either party may terminate the Agreement and/or any Contract on giving the other party not less than seven (7) days' notice in writing.
- 16.4. HSS may terminate the Agreement and/or any Contract immediately on giving written notice to the other party if:
- 16.4.1. the Equipment is lost, stolen, seized, confiscated or in HSS' reasonable opinion or the opinion of its insurer(s), damaged beyond repair;
  - 16.4.2. the Hirer fails to pay any of HSS' invoices within thirty (30) days from the due date for payment set out in clause 8.9;
  - 16.4.3. the Supplier terminates the Supplier Agreement.
- 16.5. The termination of the Agreement (or any part of it) shall be without prejudice to the rights and remedies of either party which may have accrued up to the Termination Date.
- 16.6. Upon the termination of the Agreement and any Contract, howsoever caused, without prejudice to any other rights or remedies of HSS:
- 16.6.1. HSS shall be entitled to invoice all Charges and Additional Charges incurred which have not yet been invoiced;
  - 16.6.2. the Hirer shall pay on demand all Charges and Additional Charges which are due but are unpaid at the date of demand, together with any interest accrued pursuant to clause 8.11;
  - 16.6.3. the Hirer shall pay on demand all costs and expenses incurred by HSS in recovering the Equipment and/or in collecting any sum due under the Agreement and/or Contract (including any storage, transport, insurance, repair, legal and remarketing costs);
- 16.7. Subject to clause 16.8, on the termination or expiry of any Contract HSS' consent to the Hirer's possession of the Equipment shall terminate and HSS or the Supplier may take possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located.
- 16.8. If the Agreement expires or is terminated in accordance with clause 16.3 all Contracts which have not been fully performed as at the Termination Date shall be performed, subject to clause 16.6, in accordance with these Terms and Conditions. All Charges previously agreed shall cease to apply, and the HSS catalogue prices in force at the time shall apply in respect of the performance of such Services.

## **17. Assignment**

- 17.1. The Agreement is personal to the Hirer and the Hirer shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement and/or any Contract without the prior written consent of HSS. HSS may assign its rights or subcontract any of its obligations to other companies within its group and/or for the replacement of services outlined in clause 9.

## **18. General**

- 18.1. The Agreement and any and all Contracts constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 18.1.1. neither party has entered into the Agreement and/or any Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement which is not expressly set out in the Agreement and/or any Contract; and
- 18.1.2. nothing in this clause **18.1** shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.
- 18.2. A delay in exercising or failure to exercise a right or remedy under or in connection with the Agreement or any Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and shall not constitute a waiver of any other right, remedy, breach or default.
- 18.3. If any term of the Agreement or any Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable under the laws of any jurisdiction, such term shall be deemed to be severed from the Agreement or the relevant Contract in respect only of such jurisdiction and this shall not affect the remainder of the Agreement or the relevant Contract which shall continue in full force and effect.
- 18.4. Save as otherwise expressly provided in the Agreement no variation to the Agreement or any Contract shall be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.
- 18.5. Nothing in the Agreement or any Contract and no action taken by the parties in connection with it or them shall create a partnership or joint venture or relationship of employer and employee between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
- 18.6. Each party agrees that it is an independent contractor and is entering into the Agreement and all Contracts as principal and not as agent for or for the benefit of any other person.
- 18.7. The Supplier shall be able to enforce any applicable term of the Agreement or any Contract subject to and in accordance with Contracts (Rights of Third Parties) Act 1999 and the terms of this Agreement. The parties do not intend that any term of the Agreement or any Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any other person besides the parties and the Supplier.
- 18.8. Both the Hirer and HSS will comply with any obligations imposed by the Data Protection Act 1998 ("Act") in relation to any Personal Data (as defined in the Act) which either party transfers to the other.

## **19. Notices**

- 19.1. Any notices sent under the Agreement must be in writing, delivered by hand or sent by pre-paid first class post or recorded delivery to the parties at the addresses set out in the Schedule.
- 19.2. Any notice or communication given in accordance with clause 19.1 shall be deemed to have been served:
- 19.2.1. if delivered by hand, at the time of delivery; or
- 19.2.2. if sent by pre-paid first class post or recorded delivery at 9.00 a.m. on the second Business Day after the date of posting.
- 19.3. This clause 19 shall not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

## **20. Governing Law & Jurisdiction**

- 20.1. Subject to clauses 20.2 to 20.4 (inclusive) the Agreement and any and all Contracts and any non-contractual obligations arising out of or in connection with them will be governed by English law. Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Agreement or any Contract (including in relation to any non-contractual obligations).
- 20.2. If a dispute arises out of or in connection with the Agreement (“a Dispute”) either party may by written notice to the other party refer the matter for resolution.
- 20.3. Once a notice of referral has been served in relation to a Dispute that Dispute shall be referred for resolution to the Managing Director (or equivalent position) for the time being of each party. Those representatives shall meet at the earliest convenient time and in any event within 7 days of the date of service of the notice of referral and shall attempt to resolve the Dispute.
- 20.4. If a Dispute is not resolved within 14 days of the service of the referral notice the parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.
- 20.5. Subject to clause 22.6 the procedures set out in 20.2 to 20.4 (inclusive) will be followed prior to the commencement of any proceedings by either Party in relation to a Dispute. Save as provided in this clause 20.5 neither Party shall be prevented or delayed from commencing proceedings at any time.
- 20.6. Nothing in this clause 20 will prevent or delay either party from seeking orders for specific performance, interim or final injunctive relief or commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.