

1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in the Contract.
"Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Commencement Date" means the date that the Hirer takes Delivery of the Equipment.
"Conditions" means the terms and conditions set out in this document as amended from time to time.
"Contract" means the contract between the Owner and the Hirer for the hire of the Equipment in accordance with these Conditions.
"Delivery" means the transfer of physical possession of the Equipment to the Hirer at the Site.
"Equipment" means the items of equipment listed in the Order Acceptance, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.
"Order" means the Customer's order for the Equipment, as placed by email, telephone or other electronic means (such as Facebook Messenger), and as recorded/amended by the Order Acceptance.
"Order Acceptance" means the Supplier's written acceptance of the Order.
"Payment Schedule" means the schedule of payment in the Order Acceptance which sets out the sums payable under the Contract.
"Site" means the Hirer's premises set out in the Order Acceptance.
"Rental Payments" means the payments made by or on behalf of Hirer for hire of the Equipment.
"Rental Period" means the period of hire as set out in clause 3.
"Total Loss" means the Equipment is, in the Owner's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.
"VAT" means value added tax chargeable under the Value Added Tax Act 1994.
- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes fax and e-mail.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 References to clauses and schedules are to the clauses and schedules of the Contract and references to paragraphs are to paragraphs of the relevant schedule.
- 1.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2. EQUIPMENT HIRE**
- 2.1 The Owner shall hire the Equipment to the Hirer for use at the Site subject to the terms and conditions of the Contract.
- 2.2 The Owner shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Hirer's quiet possession of the Equipment.
- 2.3 Unless expressly stated in the Contract, the Equipment does not include a lockbox or lock. The Hirer should inform the Owner prior to entering into the Contract if that is their requirement.
- 3. RENTAL PERIOD**
- Unless specified in the Order Acceptance, the Rental Period starts on the Commencement Date and shall continue for a minimum period of 90 days unless the Contract is terminated earlier in accordance with clause 10.1 by the Owner. Thereafter, the Rental Period shall continue until either (i) terminated by the Owner in accordance with the terms of the Contract, or (ii) terminated by the Hirer on giving the Owner 30 days prior written notice.
- 4. RENTAL PAYMENTS AND DEPOSIT**
- 4.1 The Hirer shall pay the Rental Payments to the Owner in accordance with the Payment Schedule. The Rental Payments shall be paid in Pounds Sterling and shall be made by Direct Debit. Any other sums which become

- due from the Hirer to the Owner under the Contract may be invoiced by the Owner at any time after they become due, and shall be payable immediately upon receipt of invoice by the Hirer.
- 4.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.
- 4.3 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.4 If the Hirer fails to make a payment due to the Owner under the Contract by the due date, then, without limiting the Owner's remedies under clause 10, the Hirer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment at 8% per year above the Bank of England's base rate from time to time, but at 8% per year for any period when that base rate is below 0%.
- 5. DELIVERY**
- 5.1 The Owner shall deliver the Equipment to the location set out in the Order Acceptance, or such other location as the parties may agree ("**Delivery Location**") after the Owner notifies the Hirer that the Equipment is ready for despatch. The Delivery Terms and the Container Guidance as referenced in the Order Acceptance are hereby incorporated into this Contract.
- 5.2 Delivery is completed upon unloading the Equipment from the delivery vehicle at the Delivery Location, such completion being "**Delivery**".
- 5.3 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. The Owner shall not be liable for any delay in Delivery of the Equipment that is caused by a Force Majeure Event or the Hirer's failure to provide the Owner with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment. Further, subject to any Delivery Location opening times specified on page 1 of the Contract, Delivery may take place at any time of day. Due to a number of factors, including traffic, the Owner is unable to guarantee any particular delivery time or slot.
- 5.4 The Owner shall notify the Hirer when the Equipment is ready for despatch;
- 5.4.1 The Owner shall indicate which date(s) are available for Delivery of the Equipment within a period of 10 Business Days following notification under clause 5.3.1 ("**Delivery Window**") (and the Hirer acknowledges that the Owner will be dependent upon the availability of its delivery contractor in this respect);
- 5.4.2 The Hirer must select one of those dates (or that date, where only one is proposed) for Delivery, whereupon it will become the "**Agreed Date**"; and
- 5.4.3 If the Hirer does not select a date as being the Agreed Date, then the Agreed Date will be deemed to have been the final day of the Delivery Window and the Hirer will be further deemed to have not accepted Delivery of the Equipment on the Agreed Date. For the avoidance of doubt, clause 5.5 below shall not apply in such circumstances.
- 5.5 If the Owner fails to deliver the Equipment on an Agreed Date, then the Hirer shall fix a revised date on which delivery of the Equipment shall take place (which must be reasonable in all the circumstances, including without limitation availability of the Owner's delivery contractor, failing which a reasonable date will be substituted as the revised date). In the event that the Owner is unable to deliver the Equipment on or before the revised date, its liability shall be limited exclusively to the Rental Payments incurred by the Hirer in obtaining replacement Equipment of similar description and quality in the cheapest market available for the minimum Rental Period, less the Rental Payments which would have been payable in relation to the Equipment. The Owner shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event, the Hirer's failure to provide the Owner with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment, or any other breach of the Contract by the Hirer.
- 5.6 If the Hirer fails to accept Delivery of the Equipment on the Agreed Date, or fails to select an Agreed Date in accordance with clause 5.3 above, or if Delivery cannot be made as a result of a breach of the Contract by the Hirer, then, except where such failure or delay is caused by a Force Majeure Event or the Owner's failure to comply with its obligations under the Contract which relate to the Equipment:
- 5.6.1 Delivery of the Equipment shall be deemed to have been completed at 9.00 am on the Business Day after the Agreed Date (including where this is deemed in accordance with clause 5.4.3 above), and any payments stated to be due from the Hirer on or prior to Delivery shall become immediately due and payable;
- 5.6.2 the Owner shall be entitled to issue its invoice in relation to any other payments which are stated as falling due upon the expiry of a certain period from the date of issue and/or receipt of invoice, and such payment(s) shall fall due upon the expiry of such period; and

5.6.3 the Owner shall store the Equipment until Delivery takes place, and charge the Hirer for all related costs and expenses (including additional transport costs, gate fees and insurance) plus an administrative fee of 10% thereof. For the avoidance of doubt, the full amount of such costs and expenses will be charged in these circumstances even where it was agreed in the Contract that the Hirer would receive discounted transportation costs in relation to the anticipated Delivery.

5.7 If three Business Days after the Agreed Date the Hirer has not accepted delivery of the Equipment nor proposed a revised Delivery date acceptable to the Owner (acting in its absolute discretion), the Owner may re-hire, sell or otherwise dispose of part or all of the Equipment.

6. TITLE, RISK AND INSURANCE

6.1 The Equipment shall at all times remain the property of the Owner, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of the Contract).

6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery. The Equipment shall remain at the sole risk of the Hirer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Hirer in a re-useable condition ("**Risk Period**") until such time as the Equipment is redelivered to or collected by the Owner. During the Rental Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:

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

6.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Owner 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 Equipment; and

6.2.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Owner may from time to time consider reasonably necessary and advise to the Hirer.

6.3 The Hirer shall give immediate written notice to the Owner (and, where applicable, the police) in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Hirer's possession or use of the Equipment.

6.4 If the Hirer fails to effect or maintain any of the insurances required under the Contract, the Owner 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 Hirer.

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

7. HIRER'S RESPONSIBILITIES

7.1 The Hirer shall during the term of the Contract:

7.1.1 ensure that the Equipment is kept and used in a suitable environment at the Site, used only for the purposes for which it is designed, and maintained in a proper manner by trained competent staff in accordance with any instructions provided by the Owner;

7.1.2 take such steps (including compliance with all safety and usage instructions provided by the Owner) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

7.1.3 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good a condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, removal and cleaning of any graffiti, defacement or other lack of cleanliness, and shall make good any damage to the Equipment;

7.1.4 provide full and safe access to the Equipment in order to enable the Owner to perform any of its obligations under the Contract, including the provision of lifting and other equipment (e.g. scissor lifts) – it being acknowledged by the hirer that it shall be a failure to comply with this clause 7.1.4 if the Hirer is unable to provide the Owner with full specifications, certification and instruction manuals for such equipment upon the Owner's request;

7.1.5 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment;

7.1.6 keep the Owner fully informed of all material matters relating to the Equipment;

7.1.7 keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without the Owner's prior written consent;

7.1.8 permit the Owner or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;

7.1.9 maintain maintenance records of the Equipment and make copies of such records readily available to the Owner, together with such additional information as the Owner may reasonably require;

7.1.10 not, without the prior written consent of the Owner, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

7.1.11 not without the prior written consent of the Owner, 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. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Hirer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Owner against all losses, costs or expenses incurred as a result of such affixation or removal;

7.1.12 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Owner in the Equipment and, where the Equipment has become affixed to any land or building, the Hirer must take all necessary steps to ensure that the Owner may enter such land or building and recover the Equipment 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 Owner of any rights such person may have or acquire in the Equipment and a right for the Owner to enter onto such land or building to remove the Equipment;

7.1.13 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Hirer shall notify the Owner and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Owner on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

7.1.14 not use the Equipment for any unlawful purpose or for the storage of any materials which may corrode, oxidise, dent, contaminate, puncture, stain or damage the Equipment;

7.1.15 not subject the Equipment to an abnormal load (which shall include any load in excess of either (i) the Owner's written and oral instructions, and (ii) any markings on the Equipment or in the documents supplied with the Equipment);

7.1.16 ensure that at all times the Equipment remains identifiable as being the Owner's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment (and shall ensure that no existing marks or signage is altered, defaced or obscured);

7.1.17 deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract at such address as the Owner requires, or if necessary allow the Owner or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and

7.1.18 not do or permit to be done anything which could invalidate the insurances referred to in clause 6.

7.2 The Hirer acknowledges that the Owner shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Hirer or its officers, employees, agents and contractors, and the Hirer undertakes to indemnify the Owner on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of the Contract.

8. WARRANTY

8.1 The Owner warrants that the Equipment shall substantially conform to its specification (as set out in the Order Acceptance), be of satisfactory quality (subject to the clarification the Container Guidance) and fit for any purpose expressly set out in the Order Acceptance.

- 8.2 The Owner shall use reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period, provided that:
- 8.2.1 the Hirer notifies the Owner of any defect in writing within two Business Days of the defect occurring;
- 8.2.2 the Owner is permitted to make a full examination of the alleged defect;
- 8.2.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Owner's authorised personnel, or fair wear and tear;
- 8.2.4 the defect did not arise out of any information, design or any other assistance supplied or furnished by the Hirer or on its behalf;
- 8.2.5 The defect was not caused (in whole or in part) by any breach of Contract by the Hirer or any force majeure event as set out in clause 12; and
- 8.2.6 the defect is directly attributable to defective material, workmanship or design.
- 8.3 If the Owner fails to remedy any material defect in the Equipment in accordance with clause 8.3, the Owner shall, at the Hirer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement.
- 8.4 Except as provided in this clause 4 and subject to clause 9.1, the Owner shall have no liability whatsoever to the Hirer in respect of (i) the Equipment's failure to comply with the warranty set out in clause 8.1, or (ii) any defect in the Equipment.
- 8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.6 This clause 8 shall apply to any repaired or replacement Equipment supplied by the Owner.
- 8.7 Where the Owner or its agent(s) attends a site designated by the Hirer to assess, repair, modify or otherwise deal with Equipment in circumstances where such activity is not an obligation of the Owner under the warranty set out in clause 8.1 (including where the attendance was for the purposes of determining whether such an obligation applied), then:
- 8.7.1 the request to do so by the Hirer shall constitute a default on the part of the Hirer; and
- 8.7.2 the Owner shall be entitled to charge the Hirer at its standard rates (for its own personnel) or the rates of its subcontractors plus a 10% mark-up for subcontractor personnel, and such attendance (and any activities performed during such attendance) shall comprise services performed in accordance with the Owners standard Terms & Conditions for the Supply of Goods and/or Services (as applicable).
- 9. LIMITATION OF LIABILITY**
- 9.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in the Contract limits any liability which cannot legally be limited.
- 9.3 Subject to clause 9.2, the Owner's total aggregate liability to the Hirer arising out of or relating to the Contract shall not exceed the sum of the total price paid for Equipment supplied hereunder.
- 9.4 Subject to clause 9.2 the Owner shall have no liability to the Hirer arising out of or in relation to the Contract for any of the following (in each case save for clause 9.4.8, whether direct or indirect):
- (i) loss of profits or revenue;
- (ii) loss of sales, business or opportunities;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings or increase in costs;
- (v) loss of use or corruption of software, data or information;
- (vi) loss of or damage to goodwill or reputation;
- (vii) losses under the Hirer's third party contracts; and
- (viii) indirect or consequential loss.
- 9.5 If the Hirer is not the sole or ultimate recipient or end user of the Equipment (each other such person being an "End User"), the Hirer shall indemnify and hold the Owner harmless from and against any liability to such End User which is in excess of and/or duplication of liability owed to the Hirer under the Contract.
- 9.6 The Owner has given commitments as to compliance of the Equipment with relevant specifications in clause 5. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and any other statutory or implied warranties or conditions are, to the fullest extent permitted by law, excluded from the Contract.
- 9.7 The Equipment hired under this Contract have been priced by the Owner on the basis of the limitations and exclusions of liability set out herein, and in the absence of some or all such limitations and exclusions would need to be increased substantially. The Hirer expressly agrees that it is reasonable on that basis for the Owner's liability to be so limited or excluded (as applicable).
- 9.8 This clause 9 shall survive termination of the Contract.
- 10. TERMINATION**
- 10.1 Without affecting any other right or remedy available to it, the Owner may terminate the Contract with immediate effect by giving notice to the Hirer if:
- 10.1.1 the Hirer fails to pay any amount due under the Contract on the due date for payment;
- 10.1.2 the Hirer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so;
- 10.1.3 the Hirer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 10.1.4 the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- 10.1.5 the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 10.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Hirer with one or more other companies or the solvent reconstruction of the Hirer;
- 10.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Hirer (being a company);
- 10.1.8 the holder of a qualifying floating charge over the assets of the Hirer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 10.1.9 a person becomes entitled to appoint a receiver over the assets of the Hirer or a receiver is appointed over the assets of the Hirer;
- 10.1.10 a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Hirer's assets;
- 10.1.11 any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.4 to clause 10.1.10 (inclusive); or
- 10.1.12 the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.2 The Contract shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 11. CONSEQUENCES OF TERMINATION**
- 11.1 Upon termination of the Contract, however caused:
- 11.1.1 the Owner's consent to the Hirer's possession of the Equipment shall terminate and the Owner may
- 11.1.1.1 by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; or
- 11.1.1.2 invoice the Hirer for the full replacement value as set out in the Contract for the Equipment (which for the avoidance of doubt shall be payable in addition to any other sums due under the Contract); and
- 11.1.2 without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the Owner on demand:
- 11.1.2.1 all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.4;
- 11.1.2.2 any costs and expenses incurred by the Owner in recovering the Equipment and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).
- 11.2 Upon termination of the Contract pursuant to clause 10.1, any other repudiation of the Contract by the Hirer which is accepted by the Owner or pursuant to clause 10.3, without prejudice to any other rights or remedies

of the Owner, the Hirer shall pay to the Owner on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period (which, in the case where the minimum period for the Contract has passed, shall be deemed to be a thirty day period from the date of termination).

- 11.3 The sums payable pursuant to clause 11.2 shall be agreed compensation for the Owner's loss and shall be payable in addition to the sums payable pursuant to clause 11.1.2.
- 11.4 If upon termination it is not reasonably practicable for the Owner to collect the Equipment from the Hirer, then at the Hirer's discretion it may, as an alternative to the sums payable under clause 11.2, invoice the Hirer for the full marked value of the Equipment plus an administration fee of £50 plus VAT (in addition to the sums payable pursuant to clause 11.1.2).
- 11.5 Where, upon collection, the Equipment contains additional items left by the Hirer, then the Hirer hereby authorises the Owner to dispose of such items or alternatively sell such items at such prices as it sees fit with a view to realising those sums owed by the Hirer hereunder (the decision of whether to seek a sale of such items being at the Owner's sole discretion). For the avoidance of doubt, this shall not prejudice or diminish the Hirer's obligation to make payment of those sums save that any sum raised by sale of such items shall, upon free and clear receipt by the Owner, commensurately reduce the sum owed by the Hirer.
- 11.6 Where clause 11.5 above applies:
- 11.6.1 If the sale of such items realises for the Owner a sum greater than that owed by the Hirer hereunder, the Owner shall nevertheless be entitled to retain that surplus as its own funds; and
- 11.6.2 any expenses incurred by the Owner in the sale or disposal of such items (such as, by way of example only, skip hire fees, rubbish collection charges, legal and other professional advice in relation to sales, auction fees etc) shall be invoiced to the Hirer in addition to the other sums due under the Contract.
- 11.7 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 agreement which existed at or before the date of termination or expiry.

12. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, then the Owner may terminate the Contract by giving 14 days' written notice to the Hirer.

13. CONFIDENTIAL INFORMATION

- 13.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, Hirers, clients or Owners of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- 13.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 13.4 The Hirer hereby authorises the Owner to contact it by email, telephone or post regarding other potential transactions or general news/updates. If the Hirer wishes to cease such correspondence, it should notify the Owner in writing.

14. ASSIGNMENT AND OTHER DEALINGS

The Contract is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

15. ENTIRE AGREEMENT

- 15.1 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.
- 15.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement,

representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

- 15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 15.4 Nothing in this clause shall limit or exclude any liability for fraud.
- 16. VARIATION**
- No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17. NO PARTNERSHIP OR AGENCY**
- 17.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. FURTHER ASSURANCE

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Contract.

19. THIRD PARTY RIGHTS

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

20. NOTICES

- 20.1 Any notice given to a party under or in connection with this Contract shall be in writing and shall be:
- 20.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
- 20.1.2 sent by fax to its main fax number; or
- 20.1.3 sent to the email address listed in the Contract or otherwise notified by a party.
- 20.2 Any notice shall be deemed to have been received:
- 20.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 20.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service (if earlier).
- 20.2.3 if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- 20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. RIGHTS AND REMEDIES

Except as expressly provided in the Contract, the rights and remedies of the Owner provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

23. SEVERANCE

- 23.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 23.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 24. GOVERNING LAW AND JURISDICTION**
- 24.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 24.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).