



**ON-DEMAND, ON-SITE, ON-TIME.**

# GARIC LIMITED – ARTICLES OF AGREEMENT (HIRE AND SALE)

**(VERSION 6)**

## BACKGROUND

(A) The Customer wishes to procure the hire or sale of certain items of Plant from Garic.

(B) Garic has agreed to hire ("Hire") or sell ("Sale") such Plant to the Customer.

### 1. HIRE AND SALE

- 1.1 In the case of a Hire, Garic agrees to hire to the Customer and the Customer agrees to accept the hire from Garic of relevant items of Plant specified in the Order subject to and in accordance with the Hire Conditions.
- 1.2 In the case of a Sale, Garic agrees to sell to the Customer, and the Customer agrees to buy from Garic the relevant items of Plant as specified in the Order subject to and in accordance with the Sale Conditions.
- 1.3 The Contract applies to a Hire or to a Sale but not to both.

### 2. NOTICES

- 2.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:
  - 2.1.1 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); or
  - 2.1.2 sent by fax to its main fax number.
- 2.2 Any notice shall be deemed to have been received:
  - 2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 2.2.2 if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting or at the time recorded by the delivery service.
  - 2.2.3 if sent by fax, at on the next Business Day after transmission.
- 2.3 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. For the purposes of this clause, "writing" shall not include e-mail.

### 3. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Except as expressly provided in these Articles of Agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

### 4. SEVERANCE

- 4.1 Each provision of the Contract is distinct and severable from the others. If at any time one or more of those provisions is or becomes invalid, unlawful or unenforceable (whether wholly or partly), the validity, lawfulness and enforceability of the remaining provisions (or the same provision to any other extent) shall not be affected or impaired in any way.
- 4.2 If any provision of the Contract is or becomes invalid, unlawful or unenforceable (whether wholly or partly) but the provision would be valid, lawful or enforceable if deleted in part, then the provision shall apply with the minimum deletion necessary to make the provision valid, lawful, enforceable.

### 5. ALTERATIONS TO TERMS AND WAIVER

- 5.1 Any variation to the Contract shall be binding only if in writing and duly executed by Garic and the Customer. A party can only waive a right or remedy provided in the Contract by express written notice.
- 5.2 If a party delays or fails to exercise any power, right or remedy under the Contract, this shall not operate as a waiver of that power, right or remedy, nor shall it impair or prejudice it. Any single or partial exercise or waiver of any power, right or remedy shall not preclude its further exercise or the exercise of any other power, right or remedy.
- 5.3 Each party acknowledges that in entering into a Contract that party has not relied on any express or implied representation (including any made negligently), assurance, undertaking, collateral agreement, warranty or covenant which is not set out in the Contract.

### 6. GOVERNING LAW AND DISPUTES

- 6.1 The construction validity and performance of the Contract shall in all respects be governed by the laws of England and Wales. Subject to the parties' right to adjudicate pursuant to clause 6.2 of these Articles of Agreement, the parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with the Contract or the subject matter or formation of this Contract (including non-contractual disputes or claims).
- 6.2 Any dispute or difference arising under or in connection with the Contract may be referred to adjudication in accordance with the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011) (the "Scheme for Construction Contracts").
- 6.3 The Adjudicator shall be such person as may be appointed from time to time under Clause 6 to act as adjudicator.
- 6.4 The Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts.
- 6.5 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith, and an employee or agent of the Adjudicator is similarly protected.
- 6.6 All disputes or differences under clause 6.2 of these Articles of Agreement shall be referred to and settled by a person to be appointed in accordance with the provisions of paragraph 2(1)(b) of the Scheme by the Royal Institution of Chartered Surveyors.

### 7. PUBLICATION DISCLAIMER

- 7.1 Garic gives no warranty or guarantee as to the accuracy or completeness of any information provided in its printed and online publications, such information is provided for information only. Full technical specifications can be obtained from Garic and Garic reserves the right to alter details and information from time to time.

7.2 The Customer is under an obligation to check details and information they wish to rely on with Garic at the time of purchase. Garic accepts no liability in respect of any errors or omissions therein contained or for any loss or damage, malfunction or direct or indirect or consequential loss arising from reliance upon Garic's publications or published information.

- 7.3 Any products shown in Garic's printed or online publications do not represent endorsement by Garic of any other products, services or organisations, and any colour reproductions of the garments featured in printed and online publications are provided for illustration only.

### 8. RESPONSIBILITIES OF THE PERSON ENTERING THE CONTRACT

The Customer warrants and undertakes that the person entering the Contract (and/or placing the Order as relevant) has authority of the Customer to execute and enter into the Contract on the Customer's behalf.

### 9. ASSIGNMENT

- 9.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Garic.
- 9.2 Garic may assign, transfer and/or charge the Contract or any part of it to any person, firm or company at any time and without having to obtain the Customer's prior consent.

### 10. DATA PROTECTION

- 10.1 The Customer and Garic each agree to comply with their obligations under the Data Protection Legislation.
- 10.2 Garic maintains privacy policies in respect of its website and business activities. The Customer consents to Garic monitoring and recording all telephone calls for the purpose of training, quality and control and to verify instructions given verbally, and to Garic monitoring and recording usage, behaviour and condition of Plant by digital telemetry.

### 11. VAT

All prices under the Contract and on delivery or advice notes exclude VAT.

### 12. CONFIDENTIALITY

- 12.1 The Customer undertakes to Garic to keep all information in connection with the Contract and the hire or sale of Plant confidential, except where:
  - 12.1.1 such information is, or comes into, the public domain other than due to wrongful use or disclosure by the Customer;
  - 12.1.2 disclosure or use is necessary by the Customer in connection with this appointment or for the performance of the Customer's obligations under this appointment (including disclosure by the Customer to the Customer's insurer and professional advisers); or
  - 12.1.3 disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign).
- 12.2 The Customer shall ensure that the Customer's respective employees, agents, sub-contractors and nominees comply with the requirements of this clause

### 13. DEFINITIONS AND INTERPRETATION

- 13.1 In these Conditions the following expressions shall have the following meanings:
  - "Articles of Agreement" means these Garic Limited Articles of Agreement (Hire and Sale) – Version 6;
  - "BVRLA Conditions" means the BVRLA standard terms and conditions for renting a vehicle;
  - "Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
  - "Consumer Contract" means a contract entered into with a person acting in his own capacity and not for or on behalf of any business or trade entity;
  - "Contract" means the legally binding contract between Garic and the Customer created by Garic's acceptance of the Order and (a) in the case of a Hire, which incorporates the Hire Conditions, or (b) in the case of a Sale, which incorporates the Sale Conditions;
  - "CPA Conditions" means the Construction Plant-hire Association model conditions for the hiring of plant;
  - "CPA Lifting Conditions" means the Construction Plant-hire Association standard terms and conditions for contract lifting services;
  - "Customer" means any company, firm, person, corporation or public authority and includes their permitted successors, assignees or personal representatives who is a customer of Garic and to whom the Plant is sold or hired;
  - "Customer's Site" means the Customer's premises or such other location notified in writing by the Customer to Garic for the delivery of the Plant;
  - "Data Protection Legislation" means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679, (including any successor legislation) and any other directly applicable regulation relating to privacy;
  - "Garic" means Garic Limited, company number 2220727 or any Group Company trading as any of Garic Limited or Welfare Cabins UK and any other associated trading names;
  - "Group Company" means in relation to a company, that company, its subsidiaries (as defined in section 1159 of the Companies Act 2006), any company of which it is a subsidiary (its holding company) and any other subsidiaries of such holding company; and each company in a group is a Group Company;
  - "Head Finance Agreement" means a finance agreement between Garic and a third party subject to which Garic has possession of the Plant;
  - "Hire Conditions" means Garic's standard conditions of hire to a Customer as set out in Appendix 1 (which incorporates (as amended therein) either the BVRLA Conditions, or the CPA Conditions or the CPA Lifting Conditions);
  - "Hire Delivery Note" means the note recording the time and place of delivery to be given to the Customer;
  - "Hire Period" means the period commencing from the time when the Plant actually leaves Garic's depot or place where last employed or used, and shall continue until the Plant is received back at Garic's named depot or other agreed location. The Hire Period includes Saturdays, Sundays or Bank or other statutory holidays;
  - "Inspection Report" means the pre and post-delivery inspection of the Plant in respect of operation and condition, carried out by Garic;
  - "Lifting Services" means a contract for Hire in respect of the provision of lifting services by Garic, as described in the Order;



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"Plant" means all classes and type of plant, tools, machinery, accommodation, toilets, vehicles, equipment and accessories or part thereof, which Garic agrees to hire or sell to the Customer, as the case may be, in accordance with the Hire Conditions and/or Sale Conditions as described in the Order;

"Order" means the Customer's written (which shall include email) instruction to hire or purchase, as the case may be, the relevant items of Plant as described in the Order (which may include, in the case of a Hire, the hire of Vehicles or Lifting Services);

"Sale Conditions" means Garic's standard conditions of sale to a Customer as set out in Appendix 2 and these Articles of Agreement;

"Vehicles" means vehicles which are the subject of a contract for Hire as described in the Order;

"Working Day" means 8 (eight) hours or if the day is a Friday it shall be 7 (seven) hours, unless otherwise specified in the Contract;

"Working Week" means the period from starting time on Monday to finishing time on Friday.

13.2 The headings used in the Contract are for convenience only and shall not affect the construction thereof.

## GARIC LIMITED – STANDARD CONDITIONS OF HIRE TO A CUSTOMER

### 1. DEFINITIONS

The definitions and interpretations within the Articles of Agreement shall apply to this appendix.

### 2. EXTENT OF CONTRACT

- 2.1 Subject to any variation under condition 2.7, these Hire Conditions and the CPA Conditions (subject to condition 2.2), or these Hire Conditions and the CPA Lifting Conditions (subject to condition 2.3), or these Hire Conditions and the BVRLA Conditions (subject to condition 2.4), (as applicable) are the only conditions upon which Garic is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of all other terms or conditions, that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
  - 2.2 Insofar as the Contract relates to the hire of Plant by the Customer, and subject always to the provisions of condition 3, the terms of the CPA Conditions shall apply to the Contract save as supplemented, amended or disapplied by the terms of these Hire Conditions. In the event of any conflict or inconsistency between these Hire Conditions and the CPA Conditions, the terms of these Hire Conditions shall prevail.
  - 2.3 Insofar as the Contract relates to the hire of Plant by the Customer with Lifting Services, and subject always to the provisions of condition 3, the terms of the CPA Lifting Conditions shall apply to the Contract save as supplemented, amended or disapplied by the terms of these Hire Conditions. In the event of any conflict or inconsistency between these Hire Conditions and the CPA Lifting Conditions, the terms of these Hire Conditions shall prevail.
  - 2.4 Insofar as the Contract relates to the hire of Vehicles by the Customer, and subject always to the provisions of condition 3, the terms of the BVRLA Conditions shall apply to the Contract save as supplemented, amended or disapplied by the terms of these Hire Conditions. In the event of any conflict or inconsistency between these Hire Conditions and the BVRLA Conditions, the terms of these Hire Conditions shall prevail.
  - 2.5 Acceptance of the Plant at the Customer's Site implies unqualified deemed acceptance of these Hire Conditions unless otherwise agreed in writing by Garic. Garic shall not, other than in the exercise of its rights under these Hire Conditions or applicable law, interfere with the Customer's quiet possession of the Plant. The Customer acknowledges that the Plant is fit for purpose and is in good condition. Condition 3 of the CPA Conditions is disallowed.
  - 2.6 No terms or conditions endorsed upon, delivered with or contained in the Customer's request for quotation, order, invoice or similar document shall form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions.
  - 2.7 These Hire Conditions and each order apply to all of Garic's dealings with the Customer and any variation to these Hire Conditions and any order shall have no effect unless expressly agreed in writing and signed by an authorised signatory of Garic.
  - 2.8 All quotations from Garic for the hire of Plant shall only be valid for a period of 24 (twenty four) hours (or such other period as agreed by Garic) from being issued and such quotations shall not constitute an offer. No conditions other than specifically set out in these Hire Conditions shall be deemed to be incorporated in or to form part of the Contract or shall otherwise govern the relationship between Garic and the Customer in relation to the hire and/or use of any particular Plant by the Customer. Any samples, drawings, descriptive matter, online publications or content or advertising issued by Garic and any description of the Plant contained in Garic's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Plant described in them. They shall not form part of the Contract and are provided for information only. Each Order (either written, including email, or verbal) constitutes an offer by the Customer to hire Plant in accordance with these Hire Conditions. The Order shall only be deemed to be accepted when Garic accepts (including by email or telephone) such Order. In relation to a Consumer Contract where these Hire Conditions apply, the Customer's statutory rights as a consumer are not affected.
- ### 3. CPA AND BVRLA CONDITIONS
- 3.1 References to provisions of the CPA Conditions in these Hire Conditions shall be references to the relevant provision in the July 2011 version or the equivalent provision in any updated version of the CPA Conditions.
  - 3.2 References in the CPA Conditions to the "Customer" shall be deemed to be references to the Customer and references to the "Owner" shall be deemed to be references to Garic.
  - 3.3 References to provisions of the CPA Lifting Conditions in these Hire Conditions shall be references to the relevant provision in the July 2011 version or the equivalent provision in any updated version of the CPA Lifting Conditions.
  - 3.4 References in the CPA Lifting Conditions to the "Client" shall be deemed to be references to the Customer and references to the "Company" shall be deemed to be references to Garic.
  - 3.5 References to provisions of the BVRLA Conditions in these Hire Conditions shall be references to the relevant provision in the July 2010 version or the equivalent provision in any updated version of the BVRLA Conditions.
  - 3.6 References in the BVRLA Conditions to "you" and "your" shall be deemed to be references to the Customer and references to the "us" and "we" shall be deemed to be references to Garic.

### 4. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

4.1 The Customer shall sign a Hire Delivery Note provided by Garic at the time of delivery of the Plant. Unless notification in writing or verbally to the contrary is received by Garic from the Customer at the time of the Plant being delivered to the Customer's Site and damage to the Plant to be incorporated on the Hire Delivery Note at the time of delivery, the Plant shall be deemed to be in good order, fit for purpose and in a good condition, save for either an inherent material fault or a material fault not ascertainable by reasonable examination, in accordance with Hire Conditions of the Contract; provided that where Plant is required to be erected on the Customer's Site by Garic, the periods above stated shall be calculated from the date of completed erection of Plant.

4.2 The Customer shall at all times during the Hire Period be responsible for the Plant's safe keeping, use in a workmanlike manner within the manufacturer's rated capacity, and return the Plant to the place specified on the completion of the hire in the same condition as when the Plant was delivered to the Customer (fair wear and tear excepted, which shall be determined at Garic's sole discretion).

### 5. DELIVERY AND COLLECTION

5.1 Delivery or collection undertaken by Garic is not included in the hire charges and shall be charged as an extra cost to the Customer (as determined by Garic from time to time), which shall be included as a separate sum on Garic's invoice. Where Garic has agreed under an Order to provide transport for the Plant to or from the Customer's site:

the Customer shall provide or ensure that unobstructed, secure, safe and unrestricted access to and over the Customer's Site is in every respect available and suitable for the vehicle used for transporting the Plant;

if the ground (including any private access road or track) is soft, unsecure, unsafe or unsuitable for the Plant to work on, travel or be transported over without timbers or equivalents the Customer shall immediately supply and lay suitable timbers or equivalents in a suitable position for the Plant to travel over, work on or be transported over, including for the purpose of delivery and collection; where the hire is for lifting equipment, any sound timber or other material supplied by Garic for use with outriggers and/or stabilisers is provided solely at the Customer's risk to assist the Customer and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the lifting equipment under the imposed loading;

the Customer shall load or unload the Plant at the Customer's Site with all skill, care and diligence and shall not suffer or permit the transport vehicle to be unduly delayed on the Customer's Site. Garic may charge for any delays on the Customer's Site (as determined by Garic from time to time); the Customer shall indemnify and keep indemnified Garic against any claims for injury to persons or loss of or damage to property (including land), during loading or unloading of the Plant and for any breach by the Customer of this clause 5;

Garic shall make reasonable efforts to deliver and collect the Plant at the agreed time (if any) however Garic shall not be liable for the consequences of any delay in the delivery or collection at the Customer's Site howsoever arising;

not less than 24 (twenty four) hours written notice must be given to Garic if the Customer wishes the Plant to be collected by Garic, unless the Hire is for modular buildings where the minimum notice periods shall be in accordance with clause 13.1. Where the Plant on hire is to be collected from its location by Garic on the instructions of the Customer, the Customer remains responsible for the safekeeping and security of the Plant until collection is effected, which shall be not more than 10 Business Days after the Plant is placed off-hire;

the Customer shall sign any delivery or collection note provided by Garic at the time of delivery or collection of the Plant by Garic. When the Plant is delivered or collected by Garic in the absence of the Customer or his representative, the delivery note shall be forwarded to the Customer's address as soon as reasonably practicable and deemed to be conclusive proof of delivery of the Plant listed thereon in good clean working order.

5.2 Where the Hire is for modular buildings, the Customer will provide suitable foundations or hard standing which meet the requirements of Garic for the Order, and a lay down area for installation and removal of the Plant.

### 6. HANDLING / USE OF THE PLANT

6.1 The Plant shall be used only for the purpose for which it is designed. The Customer shall be responsible for ensuring the observance of all proper safeguards and precautions against accidents in connection with the use of the Plant, and for ensuring its use by the Customer's authorised persons only.

6.2 The Customer shall, and shall ensure its authorised persons shall, use the Plant in a skilful, diligent and proper manner and the Customer shall be responsible for its day to day maintenance and servicing (including but not limited to it greasing and oiling). Unless otherwise agreed by Garic, the Customer must ensure the correct grade of fuel, oil and grease is used in the Plant and shall be solely responsible for and shall indemnify and keep indemnified Garic in respect of all damages, losses, costs and expenses arising as a result of not maintaining the Plant with the correct level, type and grade of fuel, oil or grease.

6.3 The Customer is responsible for checking the calibration of the Plant on each occasion before use. Final determination of the suitability of the Plant for any specific use is the Customer's responsibility and the Customer assumes all risk and liability in this regard.

6.4 The Customer shall indemnify and keep indemnified Garic for injury to persons or loss of or damage to property caused by or in connection with the Customer's use of the Plant and/or the Customer's failure to operate the Plant in a safe and proper manner.

6.5 The Customer shall indemnify and keep indemnified Garic against any and all liability, charges, fines, costs and expenses incurred or imposed as a result of the Customer's use of the Plant during the Hire Period, including but not limited to any parking fines, excess charges incurred under the Road Traffic Regulations Act 1984, any liability arising under any applicable Congestion Charge Order, any breach of any legislation or regulations covering vehicle excise, fire and/or health & safety regulation and any charges made by HM Revenue & Customs as a result of seizure of the Plant.

6.6 The Customer shall be responsible for ensuring that the Plant is not used or stored in an environment that could result in the Plant being affected by any type of corrosion or erosion. The Customer shall be solely responsible for all costs and/or expenses incurred in repairing to the Plant damaged as a result of the Customer using or storing the Plant in a corrosive or erosive environment.

6.7 Where the Plant has a toilet facility (including but not limited to Vehicles), the Customer shall

be solely responsible for the lawful and safe discharge and disposal of all waste, which for the avoidance of doubt shall be classified as trade waste. The Customer shall be solely responsible for obtaining and maintaining all necessary licences, consents and authorisations relating to the discharge and disposal of all such waste.

- 6.8 Where the Plant is hired with drinking water, the Customer is responsible for testing and servicing all Plant in compliance with any legislation, statute or code of practice in relation to the prevention and control of legionella bacteria and legionnaire's disease. The Customer shall fully and completely indemnify and keep indemnified Garic in respect of all claims losses and damages by any person whatsoever for injury to person or property caused by or in connection with a failure to comply with this provision.
- 6.9 The Customer is to obtain at their cost all consents, permissions and licences required for the Hire, including but not limited to planning consents and building control and building regulations. The Customer shall fully and completely indemnify and keep indemnified Garic in respect of all claims losses and damages by any person whatsoever for injury to person or property caused by or in connection with a failure to comply with this provision.

## 7. BREAKDOWN SERVICING AND REPAIRS

- 7.1 The Customer shall immediately inform Garic of any breakdown or unsatisfactory working of the Plant. Garic shall use reasonable endeavours to deal and assist with necessary repairs as quickly as is reasonably possible and in accordance with the Hire Conditions or any applicable warranty or guarantee relating to the Plant in need of repair. Claims for breakdown allowance shall only be allowed from the date and time that notice is received, providing that such a breakdown is advised immediately by the Customer and confirmed within three days in writing by the Customer. For the avoidance of doubt, Garic shall, at its sole discretion, decide whether to repair or replace the Plant. For a Contract for the hire of Plant clause 9 of the CPA Conditions is replaced by this clause 7.
- 7.2 Reasonable allowance for the hire charges and for the reasonable cost of repairs that have been expressly authorised by Garic, in writing, will be made to the Customer for any stoppage due to breakdown of the Plant caused by the development of either a material inherent fault or a material fault not ascertainable by reasonable examination, or fair wear and tear, and for all stoppages for normal running repairs in accordance with the Hire Conditions of the Contract.
- 7.3 The Customer shall not repair the Plant without the written or verbal authority of Garic. Where written authority is given the Customer is responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture. If a tyre has to be replaced this must be replaced "like for like" e.g if a Pirelli tyre is fitted when supplied, the Customer is to use a Pirelli of the same quality in any replacement.
- 7.4 The Customer shall take all necessary steps to keep fully acquainted, aware and up to date with the state and condition of the Plant. If the Plant is continued in use after it is known by the Customer to be in an unsafe or unsatisfactory state or environment the Customer shall be solely responsible for any further damage, loss or accident.
- 7.5 The Customer shall be liable for all cost and expense involved arising from any breakdown and all loss or damage incurred by Garic due to negligence, misdirection or misuse of the Plant whether by the Customer or other persons and for the payment of hire charges at Garic's standard rate during the period the Plant is necessarily idle and unavailable due to such breakdowns or damage.
- 7.6 Garic will be responsible for the cost of repairs to the Plant involved in breakdowns as a result of fair wear and tear (which shall not include corrosive or erosive damage to the Plant).
- 7.7 Except when the Plant on-hire to the Customer is a Vehicle, in which case this clause shall not apply, where the Plant has been in the possession of the Customer for a period in excess of the recommended service interval for that item, howsoever that interval is expressed (including but not limited to the hours and time) it is the responsibility of the Customer to inform Garic of the need for the Plant to be serviced and the location of the Customer's Site so that Garic can arrange to attend the Customer's Site and service the Plant. In the event of the Customer failing to inform Garic of the need for the Plant to be serviced or the Customer preventing Garic from accessing the Customer's Site to service the Plant, the Customer shall be liable to Garic for any claim howsoever arising as a result of the Customer's continued use of the Plant, beyond the recommended service interval.

## 8. STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown Services and Repairs" (clause 7)), for stoppages through causes outside Garic's control, including but not limited to bad weather and/or ground conditions nor shall Garic be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or any unsafe and/or hazardous environment. For the avoidance of doubt, the Customer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or an unsafe or hazardous environment.

## 9. LIMITATION OF LIABILITY

- 9.1 This clause 9 shall set out Garic's total liability in respect of all losses under or in connection with a Contract:
- a) Garic shall have no liability or responsibility for any loss or damage of whatever nature due to or arising through any cause beyond his reasonable control including late or non-arrival of the Plant at the location of hire; notwithstanding any provision to the contrary in the Contract, Garic shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Customer's loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; for a Contract for the hire of Plant whenever the Contract (including these clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Customer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made; nothing in these Hire Conditions shall limit or exclude Garic's liability for fraud, death, personal injury or any other liability which it would be illegal or unlawful for Garic to exclude or limit liability for.
- 9.2 Clause 12 of CPA Conditions does not apply.

- 9.3 Where the Contract relates the hire of Plant with Lifting Services Garic's liability shall be limited in accordance with Clause 6.2 of the CPA Lifting Conditions, save that Clause 6.2.2. of the CPA Lifting Conditions shall be amended from "£5,000,000" to "£1,000,000", and Clause 7.2 of the CPA Lifting Conditions shall not apply to the Contract.

## 10. CUSTOMER'S RESPONSIBILITY FOR LOSS, DAMAGE, NON-RETURNED OR UNCLEAN PLANT

- 10.1 For a Contract for the hire of Plant, during the Hire Period the Customer shall make good to Garic all loss of or damage to the Plant from whatever cause the same may arise (including, but not limited to, any damage caused to tyres and inner tubes including punctures and breakages to windows and windscreens and any corrosive or erosive damage), fair wear and tear excepted, and except as provided in clause 7, shall also fully and completely indemnify and keep indemnified Garic in respect of all claims losses and damages by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period, and in respect of all costs and charges in connection therewith whether arising under statute or common law. In the event of loss of or damage to the Plant, hire charges shall be continued until settlement has been effected. Clause 13(b) of the CPA Conditions is substituted by this clause.
- 10.2 When the Plant is lost, stolen, damaged beyond reasonable economic repair or cannot be retrieved by Garic, the hire will be deemed to end when the Customer pays to Garic Garic's invoiced charges for such loss, theft or damage of the Plant. Charges for such loss, theft or damage of such Plant will be based on current replacement values on a new for old basis.
- 10.3 Plant deemed by Garic to be damaged or returned in an unclean or unsatisfactory condition will be held for 3 (three) Business Days from Garic giving notice to Customer of the same for the Customer to inspect. After the expiration of the third Business Day necessary repairs, servicing or cleaning will be carried out by Garic. The Customer agrees to pay to Garic, on demand, all costs and expenses incurred by Garic in rectifying the condition of the Plant returned damaged, or in an unsatisfactory or unclean condition. Hire charges will continue until such repair or rectification are complete. The Customer is responsible for all costs Garic may incur in recovering any lost or stolen Plant, and Garic accept no liability whatsoever for any loss, theft or damage to Plant during the Hire Period. Where Plant is written-off charges of replacing such Plant will be based on current replacement values on a new for old basis. Clauses 8 and 9 of the BVRLA Conditions are deleted and substituted by this clause 10.

## 11. NOTICE OF ACCIDENTS, DAMAGE OR DEFECTS

The Customer shall immediately upon becoming aware of any damage and or defect to, in or with the Plant, notify Garic of such damage, regardless of whether such damage occurs before, during or after the Hire Period

## 12. CHANGE OF THE CUSTOMER'S SITE

Except where the Contract is for the hire of a Vehicle (in respect of which Garic acknowledges and agrees will not be consigned to any fixed Customer Site and therefore, this clause shall not apply), the Plant shall not be moved from the Customer's Site to which it was delivered or consigned without the written permission of Garic (which may be given at Garic's sole discretion). In any event, the Customer shall ensure the Plant will not be used outside of England, Scotland and Wales without Garic's prior written consent. Clause 16 of the CPA Conditions is replaced by this clause 12.

## 13. COMMENCEMENT AND TERMINATION OF HIRING

- 13.1 Subject to Garic providing consent to re-hire, the Hire Period will commence on the date the Plant leaves Garic's premises and will (unless otherwise agreed by Garic including but not limited to when Garic agrees the Plant can be off-hired by the Customer at any location other than Garic's premises pursuant to Clause 5(g)) terminate on the day it is returned to Garic's premises. The day of hiring and the day of return will be charged respectively as whole days. 24 (twenty four) hours notice of termination of hire must be given by the Customer to Garic in writing of the intention to off-hire, save where the Hire is for modular buildings where the minimum notice periods shall be 4 weeks.
- 13.2 The minimum Hire Period is one week, save for  
a) modular buildings where the minimum Hire Period is 52 weeks;  
wheel wash systems where the minimum Hire Period is 4 weeks; and  
site accommodation where the minimum Hire Period is 4 weeks,  
and the Customer will be charged for the respective minimum Hire Period even if the duration of hire is less (unless agreed otherwise in the Order).
- 13.3 Garic shall not charge the Customer any hire charges for any period for which a Garic off-hire reference number has been obtained, provided that the Customer shall still be responsible for such hire charges for those items if he is unable to provide Garic's off-hire reference number to Garic for that item of the Plant. In the event that any item of the Plant which is off-hired is not available for collection when Garic attends the Customer's Site to collect it, such Plant shall be deemed with immediate effect to be placed back on hire, and all hire charges and costs shall be due in accordance with these Hire Conditions. The Customer shall be responsible for the reasonable costs and expenses incurred by Garic in seeking to collect such off-hired items.
- 13.4 Where Plant is subject to a Head Finance Agreement the hiring of that Plant may be terminated by Garic giving 30 (thirty) days written notice to the customer if the owner of the Plant becomes entitled to require possession of that Plant under the terms of the Head Finance Agreement.
- 13.5 Clauses 18, 19, 20, 21, 22, 23(a) and 23(b) of the CPA Conditions do not apply.
- 13.6 Clause 10 of the CPA Lifting Conditions does not apply.

## 14. COMMODITIES AND ANCILLARIES

All commodities and ancillaries are supplied to the Customer in a good condition. Leads cut or damaged will be charged to the Customer at Garic's current list prices (as determined by Garic from time to time).

## 15. PROTECTION OF OWNER'S RIGHTS

- 15.1 Subject to Garic providing consent to re-hire, the Customer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant and shall protect the same against distress, execution or seizure, free from legal process or lieu, fully protected and secure and shall indemnify and keep indemnified Garic against all losses, damage, costs, charges and



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expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition.

- 15.2 If the Customer make default in punctual payment of any sum due to Garic for hire of the Plant or other charges or shall fail to observe and perform the terms and conditions of this Contract, or if the Customer shall suffer any distress or execution to be levied against him or make or propose to make any arrangement with his creditors or becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force; or shall do or cause to be done or permit or suffer any act or thing whereby Garic's rights in the Plant may be prejudiced or put into jeopardy, this Contract may be terminated immediately by notice from Garic to the Customer (notwithstanding that Garic may have waived some previous default or matter of the same or a like nature). Clause 12 of the BVRLA Conditions and clause 33 of the CPA Conditions do not apply.
- 15.3 The Contract shall thereupon be deemed terminated by reason of the Customer's breach and it shall be lawful for Garic to promptly retake possession of the Plant and for that purpose enter into or upon any premises where the same may be and the determination of the hiring under this clause 15 shall not affect the right of Garic to recover from the Customer any monies due to Garic under the Contract or any of Garic's rights and remedies. In particular, without limitation, Garic shall be entitled to claim the hire charges outstanding as at the date of termination of the hire under this clause, any loss and/or expense incurred, any return transport charges, and damages for the Customer's actual or deemed breach of the Contract under this Clause.
- 15.4 If applicable, the Customer shall not remove, deface or cover up Garic's name plate, Plant number or any other mark on the Plant indicating that it is Garic's property.
- 15.5 The Customer may cancel the order at any time until the date falling 3 (three) Business Days prior to the delivery date (the "Cancellation Date"), by giving Garic written notice of their intention to cancel. Any notice received after the Cancellation Date but prior to the proposed delivery date will incur the following charges:
- a) Towable – 25% of transport charge;  
Dropside Flat bed – 25% of transport charge;  
Rigid with Crane – 50% of transport charge;  
Rigid with Crane and Drag Trailer – 75% of transport charge;  
Artic with Crane – 100% of transport charge;  
Welfare Van Delivery – 25% of transport charge;  
Wheelwash/Abnormal Load – 100% of transport charge.

## 16. ELECTRICAL EQUIPMENT

Where the Plant comprises electrical equipment (in part or in whole) the same should only be used with plugs and/or sockets as fitted but if temporarily replaced with other suitable plugs or sockets it shall be the Customer's responsibility to ensure that this is carried out by a qualified electrician, who must also reinstate the Plant to its original condition on the expiry of the Hire Period. Under no circumstances should electrical Plant be used without it being correctly earthed unless it is of double insulated construction. Such electrical equipment must be connected by a qualified electrician to an adequate electrical supply of the correct voltage, and any mains connections, and Earth Loop Impedance are to be performed at the Customer's cost by the electrical engineer.

## 17. DETERMINATION OF HIRE

If the Customer is in breach of the Contract, Garic shall be entitled to terminate the Contract (such termination to be effective immediately) and to repossess the Plant or any part thereof. Garic shall be entitled to enter upon the Customer's site (at such a time as Garic deem safe to do so) for the purpose of repossessing the Plant and the Customer shall pay hire charges until the Plant is collected, any direct loss and/or expense incurred as a result of the termination, and the cost of recovering and collecting the Plant.

## 18. PAYMENT TERMS

18.1 Unless a credit facility has been granted by Garic to the Customer, all hire charges are payable in advance and all other charges are due and payable immediately upon issue of invoice. The invoice will be issued as soon as is reasonably practicable following agreement of the Order. The due date for payment shall be the date of Garic's invoice, and the final date for payment shall be 30 (thirty) days from the due date (unless other payment terms are agreed by Garic). The Customer shall pay all sums due to Garic under this Contract without any set-off, deduction, counter claim and/or any other withholding of monies. Garic may terminate the hire in the event that the Customer fails to make payment of the sums due by the final date for payment. Payment is not deemed to have been made until Garic receive cash or cleared funds in respect of the full sum outstanding.

18.2 Garic shall be entitled to charge the Customer interest in relation to any late payment at the rate of 8% above HSBC Bank Plc base rate until payment in full is made. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay interest together with the overdue amount. Clause 7(j) of the BVRLA Conditions, clause 36 of the CPA Conditions and clause 10 of the CPA Lifting Conditions do not apply.

18.3 In the event that the Customer intends to pay less than the sum notified by Garic on each payment application, the Customer must notify Garic of the sum that they consider due (and the basis of their calculation of the sum due) no later than 9 (nine) days prior to the final date for payment. All invoice queries must be notified in writing to Head Office. If the pay less notice is not received by this date the Customer will pay the sum notified on the invoice on or before the final date for payment.

## 19. HIRE CHARGE CALCULATION

Garic's standard minimum period of hire is as set out in clause 13.1 unless stated otherwise in a quotation or price proposal document or agreed by Garic in writing. Unless stated otherwise in Garic's price list or quotation, subject to clause 13.2 Garic's hire charges are calculated on a percentage of the weekly hire rate. Clause 25 of the CPA Conditions does not apply.

## 20. MAXIMUM USE

Plant is hired is subject to a maximum use of 40 (forty) hours per week in respect of any Plant with a generator product, and/or 600 (six-hundred) miles in respect of the hire of a Vehicle. Excess charges will apply in respect of any use over the maximum uses stated here.

## 21. ADVICE

If advice or information is sought from and given by any representative of Garic, the Customer understands and accepts that such advice or information is given for information only and does not relieve or reduce the Customer's requirement to make their own independent assessment as to the adequacy or suitability of the Plant for their needs.

## 22. HOLIDAY PERIODS

It is the responsibility of the Customer to ensure the safekeeping of all the Plant hired which is not returned to Garic before the start of any holiday period (which means any bank or public holidays). The Plant will be deemed to be in use during the holiday period and will be charged in accordance with the terms of the Contract. The Plant is deemed to be on-hire during holiday periods and the Customer is responsible for its safekeeping.

## 23. SUSPENSIONS

All requests for the suspension of hire charges must be made 14 (fourteen) days in advance to Garic in writing. Garic will confirm their agreement or otherwise in writing. No suspension allowance will be made unless confirmed in writing by Garic. Unless otherwise agreed in writing by Garic, the Plant is deemed to be on-hire during weekends and holiday periods and the Customer is responsible for its safekeeping. During a period of suspension the Plant shall remain at the risk of the Customer and shall be kept in the possession of the Customer, unless Garic decides, at their sole discretion, otherwise.

## 24. AVAILABILITY

Plant is offered for hire, subject always to availability at the time of order. Garic will not be liable for any loss as a result of the Plant being unavailable for hire.

## 25. INSURANCE, TITLE AND RISK

- 25.1 The Customer shall take out and maintain insurance against any and all liabilities the Customer might incur under the Contract, including where the Contract is for the Hire of Plant insuring the Plant at full market value, with a reputable insurance company. The Customer shall be solely responsible for notifying its insurers in relation to the type of the Plant being hired from Garic (including, but not limited to, details regarding the size and type of any vehicle(s) being hired). The Customer will, on request by Garic, at any time produce to Garic evidence of the insurance policies covering the Plant and Garic shall be included as a loss payee on such policy. If the Customer fails to keep the Plant insured to the satisfaction of Garic or fails to produce evidence of insurance, Garic may, at the expense of the Customer, insure the Plant and the Customer will pay to Garic on demand any sums expended by Garic for such purpose with interest payable in addition at a rate of 8% above HSBC Bank Plc base rate from the time of Garic having taken out such insurance until the date of repayment of such sums by the Customer.
- 25.2 The Plant shall at all times remain the property of Garic, and the Customer shall have no right, title or interest in or to the Plant (save the right to possession and use of the Plant during the Hire Period subject to these Hire Conditions).
- 25.3 Where the Contract is for the hire of Plant, risk of damage to or loss or theft of the Plant shall pass to the Customer on loading the Plant on to the delivery vehicle at Garic's premises for delivery to the Customer and shall remain with the Customer for the duration of the Hire Period and any further term during which the Plant is in the possession, custody or control of the Customer. Risk shall pass back to Garic on unloading of the Plant from the delivery vehicle at Garic's premises. Notwithstanding delivery and the passing of risk or any other provisions of the Contract, the Customer shall not acquire any right in or property to the Plant.
- 25.4 The Customer shall, during the Hire Period, be responsible for the safety of all personnel, property, items and goods left in any Plant by the Customer, its employees, subcontractors and agents and the Customer shall indemnify and keep indemnified Garic in respect of all claims for the loss or theft of such personal property, items and goods.

## 26. FUEL AND VEHICLE CARE

- 26.1 All Plant is not supplied with fuel unless specified at the time of order and paid for by the Customer. Vehicles are supplied with approximately a quarter of a tank of fuel at commencement of Hire and shall be returned by the Customer with at least a quarter of a tank of fuel. If the Vehicle is returned with less than a quarter of a tank of fuel the Customer will be liable to Garic at the prevailing Garic rate per litre to top up the fuel to a quarter of a tank.
- 26.2 In respect of all Vehicles, the Customer shall, during the Hire Period, check on a daily basis the engine oil level, radiator water level, washers and wipers, lights, wheel nuts brake fluid level and if applicable, the tow-bar.

## 27. HIRE CHARGE ALTERATIONS

Garic shall be entitled to revise or increase the hire rate for any item of the Plant by giving 7 (seven) days written notice to the Customer's address as detailed in the Contract.

## 28. SITE ACCOMMODATION AND MODULAR BUILDINGS

- 28.1 Unless stated otherwise in the Contract, where the Hire is for modular buildings, there has been no inclusion in the charges for the following (which will be chargeable to the Customer as an additional sum):
- a) installation outside of a Working Day or Working Week;  
additional earthing, using earthing clamps or other methods of lighting conductivity;  
IT/Telecom points and cabling, fire alarm and emergency lighting, furniture, nor the supply and installation of Air conditioning systems;  
any specialist requirements with regards to roof work / working at height by Garic. Whilst working at height Garic's methodology is to attach to the off-loading crane via inertia, lanyard and harness and access the roof via footed ladder. Should this method of roof work not be permitted it is at the Customer's cost to provide other means of access;  
any site specific lifting plan, when using a Hiab system of installation or dismantling the Plant; or  
any annual electricity testing and inspection.
- 28.2 Where the Hire Duration is in excess of 12 (twelve) months Garic reserve the right to apply Retail Prices Index or Road Haulage Association inflationary increases in collection transport costs to the price.



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## 29. PPE

Garic will provide the statutory minimum PPE requirements as authorised by the HSE. If the Customer requires any further PPE, Garic may provide this subject to an additional charge applying.

## GARIC LIMITED - STANDARD CONDITIONS OF SALE TO A CUSTOMER

### 1. GARIC'S CONDITIONS APPLY

- 1.1 Unless otherwise specifically agreed in writing by Garic, all quotations and contracts for the supply of goods by Garic are made upon these Sale Conditions which shall at all times override any terms and conditions which the Customer imposes or seeks to impose.
- 1.2 Delivery of any goods following a quotation for supply made by Garic will be made only upon the Sale Conditions. Orders are accepted subject to the Sale Conditions.
- 1.3 Any variation must be approved by an authorised Garic employee and be in writing. Any quotation or estimate is given subject to the Sale Conditions.

### 2. BASIS OF CONTRACT

- 2.1 An order constitutes an offer by the Customer to purchase goods and/or services in accordance with these Sale Conditions.
- 2.2 The order shall only be deemed to be accepted when Garic issues a confirmation of order (including by email or telephone) of the order, at which point and on which date a contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Garic which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter, online publications, or advertising issued by Garic and any description of the goods or illustration or descriptions of the services contained in Garic's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the services and/or goods described in them. They shall not form part of the Contract or have any contractual force or effect.
- 2.5 All of these Sale Conditions shall apply to the supply of both goods and services except where application to one or the other is specified.
- 2.6 In relation to a Consumer Contract, these Sale Conditions do not affect any of the Customer's statutory rights as a consumer.

### 3. INTERPRETATION AND DEFINITIONS

In these conditions, unless the context otherwise requires, the following terms shall have the following meanings, and the definitions and interpretations in the Articles of Agreement shall apply;

- 3.1 "Goods" means the Goods (including any instalments of the Goods or any parts for them) which the Customer agrees to buy from Garic in accordance with these conditions.
- 3.2 "Work" means the services carried out by Garic on behalf of the Customer under these conditions.
- 3.3 "writing" includes email, telex, cable, facsimile transmission and any comparable means of communication accepted by Garic.

#### 4. RELATIONSHIP

- 4.1 Garic shall sell the Goods and carry out the Work (if applicable) and the Customer shall purchase the Goods and the Work in accordance with any written quotation of Garic which is accepted by the Customer, or any written or verbal order of the Customer which is accepted in writing by Garic, subject in either case to these conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made, by the Customer and all orders for the Goods and the Work shall be deemed to be an offer by the Customer to purchase the Goods and the Work pursuant to these conditions.
- 4.2 The Sale Conditions shall apply to all contracts for the sale of the Goods and supply of the Work by Garic to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order confirmation of order or similar document.
- 4.3 Any advice or recommendation given by Garic, its employees or agents to the Customer, its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Garic is given for information only and is relied upon entirely at the Customer's own risk, and Garic shall not be liable for any such advice or recommendation which is not so confirmed and Garic shall not be liable for any loss or damage whatsoever or howsoever arising suffered by the Customer in reliance upon the advice or recommendation.
- 4.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, or other document or information issued by Garic shall be subject to correction entirely at Garic's discretion and without any liability on the part of Garic.

### 5. ORDER AND SPECIFICATIONS

- 5.1 No order submitted by the Customer shall be deemed to be accepted by Garic unless and until confirmed (in writing) by an authorised representative of Garic.
- 5.2 The Customer shall be responsible to Garic for ensuring the accuracy of the terms of any Order submitted by the Customer and for ensuring the accuracy of all specifications, patterns, drawings, photographs, samples, designs and information provided by the Customer to Garic relating to the Goods and the Work and the Customer shall supply all such information relating to the Goods and the Work within a reasonable time to enable Garic to perform the contract in accordance with these conditions.
- 5.3 The Goods and the Work where applicable shall be manufactured and supplied in accordance with the description, specifications, quantity and quality set out in Garic's quotation (if accepted by the Customer) or the Customer's Order (if accepted by Garic).
- 5.4 Where any specifications, patterns, drawings, photographs, samples, designs and information relating to the Goods and the Work have been provided by the Customer the copyright, design right, or other intellectual property in them shall remain the property of the Customer however the Customer grants Garic an irrevocable, loyalty-free licence to use the same (such licence shall be sub-licensed by Garic without consent) and where the Goods are to be manufactured,

assembled, supplied or any process is to be applied to the Goods by Garic in accordance with any specifications, patterns, drawings, photographs, samples, designs and information supplied by the Customer, the Customer warrants that the use of the specifications, patterns, drawings, photographs, samples, designs and information shall not infringe the patent, copyright, design right, trade mark, industrial property rights, intellectual property rights or any other rights of any third party and the Customer shall indemnify and keep Garic indemnified, for all loss, damage, costs and expenses including legal costs whatsoever and howsoever arising resulting from a breach by the Customer of this clause or which results from Garic's use of the information supplied by the Customer, in accordance with clause 13.

- 5.5 Garic reserves the right from time to time and in its absolute discretion to make any changes in the specification of the Goods and the Work (where applicable) which are required to comply with any applicable safety or other statutory requirement or which does not materially affect the quality or fitness for purpose of the Goods or the Work (to be determined at Garic's discretion).
- 5.6 No order which has been accepted by Garic may be cancelled by the Customer except with the agreement in writing of Garic and on terms that if cancelled more than 7 days before delivery then the Customer must pay the reasonable costs incurred by Garic to the date of cancellation including but not limited to costs committed to a third party which Garic are unable to cancel; but if cancelled less than 7 days before delivery then the Customer shall indemnify Garic in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Garic as a result of or in connection with the cancellation by the Customer.
- 5.7 Garic grants to the Customer a revocable licence to use Garic's intellectual property for the purposes of the order only.

### 6. PRICE OF THE GOODS/WORK

- 6.1 Subject to contrary written agreement between Garic and the Customer the price of the Goods and the Work (where applicable) shall be Garic's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Garic's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time all prices may be altered by Garic without giving notice to the Customer.
- 6.2 Garic reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and the Work (where applicable) to reflect any increase in the cost to Garic which is due to any factor beyond the reasonable control of Garic (including without limitation, foreign exchange fluctuations, currency regulations, taxes and duties and the cost of labour, materials and other manufacturing costs) any change in delivery dates, quantities or specifications for the Goods and the Work (where applicable) which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Garic adequate or timely information or instructions.
- 6.3 Except as otherwise stated under the terms of any quotation or in any price list of Garic, and unless otherwise agreed in writing between the Customer and Garic, all prices are given by Garic on an ex works basis, and where Garic agrees to deliver the Goods other than at Garic's premises or to arrange for the Goods to be delivered other than at Garic's premises the Customer shall be liable to pay Garic's charges for transport, craneage, packaging and insurance.

### 7. TERMS OF PAYMENT

- 7.1 Subject to any special terms agreed in writing between the Customer and Garic, Garic shall be entitled to invoice the Customer for the price of Goods and the Work prior to delivery of the Goods or provision of the Work.
- 7.2 The due date for payment of shall be the date of Garic's invoice, and shall be in accordance with the milestones agreed. The final date for payment of the total price shall be 24 (twenty four) hours prior to delivery of the Goods or provision of the Work. Receipts for payment will be issued only upon request.
- 7.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Garic, Garic shall be entitled to:
  - a) cancel the Contract for the supply of the Goods and/or Work, or suspend any further deliveries of the Goods, or further provision of Work, to the Customer;
- 7.4 appropriate any payment made by the Customer for such of the Goods or Work (or the Goods supplied under any other contract between the Customer and Garic) as Garic may think fit (notwithstanding any purported appropriation by the Customer); and
- 7.5 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above Barclays Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 7.4 The Customer may not withhold payment of any invoice or other amount due to Garic by reason of any right of set off or counterclaim which the Customer may have or allege to have for any reason whatsoever under this Contract or any other agreement between Garic and the Customer.
- 7.5 In the event that the Customer intends to pay less than the sum notified by Garic on each payment application, the Customer must notify Garic of the sum that they consider due (and the basis of their calculation of the sum due) no later than 5 (five) days prior to the final date for payment. All invoice queries must be notified in writing to Head Office. If the pay less notice is not received by this date the Customer will pay the sum notified on the invoice on or before the final date for payment.

### 8. DELIVERY

- 8.1 Unless otherwise agreed in writing delivery of the Goods shall be made by the Customer collecting the Goods at Garic's premises at any time after Garic has notified the Customer that the Goods are ready for collection. Save where the Goods are to be collected by the Customer from Garic's premises the Customer shall be deemed to have collected the Goods from Garic's premises at the time the Goods are handed over at Garic's premises to the haulage contractor engaged by Garic on behalf of the Customer to transport the Goods to the Customer's premises. The cost of such transportation shall be borne by the Customer.
- 8.2 Any dates for delivery quoted by Garic in relation to the Goods are estimates only and Garic shall not be liable for any loss or damage whatsoever due to the failure by Garic to deliver the Goods (or any of them) promptly or at all. Time for delivery shall not be of the essence unless previously agreed by Garic in writing.



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- 8.3 Garic has the right to deliver the Goods in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 8.4 Garic may deliver the Goods by separate instalments and each separate instalment shall constitute a separate contract and shall be invoiced and paid for in accordance with these conditions. The failure by Garic to deliver any one or more of the instalments on the due dates shall not entitle the Customer to treat the whole contract as repudiated.
- 8.5 If Garic fails to deliver the Goods and (where applicable) to carry out the Work for any reason other than any cause beyond Garic's reasonable control or the Customer's fault and Garic is liable to the Customer for a breach of these conditions the remedies of the Customer shall be limited to those set out in Clause 12.9.
- 8.6 Notwithstanding any other provision of these terms and conditions the failure of the Customer to pay for any one or more of the said instalments of the Goods on the due dates shall entitle Garic (at Garic's absolute discretion) without notice to suspend further deliveries of the Goods pending payment by the Customer and/or to treat the contract as repudiated by the Customer.
- 8.7 If the Customer fails to take delivery of the Goods at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Garic's default) then, without prejudice to any other right or remedy available to Garic, Garic may:
- a) store the Goods until actual delivery and charge the Customer for all reasonable costs (including insurance) of storage; or
- sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract.
- 8.8 Garic may cancel the Contract at any time before the Goods are delivered by giving notice in writing. Garic shall not be liable for any loss or damage whatsoever or howsoever arising from such cancellation, including but not limited to any loss of profit, loss of use or indirect or consequential losses.
- 9. RISK AND TITLE**
- 9.1 The Goods shall be at the Customer's risk from:
- a) in the case of the Goods to be delivered at Garic's premises, at the time when Garic notifies the Customer that the Goods are available for collection; or
- in the case of the Goods to be delivered otherwise than at Garic's premises, at the time of delivery or, if the Customer fails to take delivery of the Goods, the time when Garic had tendered delivery of the Goods.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, title in the Goods shall not pass to the Customer until Garic has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by Garic to the Customer for which payment is then due and until there are no other sums whatever due from the Customer to Garic under the Contract.
- 9.3 Until such time as the title in the Goods passes to the Customer in accordance with clause 9.2, the Customer shall:
- a) hold the Goods and each of them on a fiduciary basis as bailee for Garic. The Customer shall store the Goods (at no cost to Garic) separately from all other Goods in its possession and marked in such a way that they are clearly identified as Garic's property; not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; notify Garic immediately if it becomes subject to any of the events listed 14.1.4; give Garic such information relating to the Goods as Garic may require from time to time.
- 9.4 Notwithstanding that the Goods (or any of them) remain the property of Garic the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value for the account of Garic. Any such sale or dealing shall be a sale or use of Garic's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings. Until title in the Goods passes from Garic the entire proceeds of sale or otherwise of the Goods shall be held in trust for Garic and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as Garic's money.
- 9.5 Garic shall be entitled to recover the price (plus VAT) notwithstanding that title in any of the Goods has not passed from Garic.
- 9.6 Until such time as property in the Goods passes from Garic, the Customer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to Garic. If the Customer fails to do so Garic may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Customer under clause 9.4 shall cease.
- 9.7 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of Garic. Without prejudice to the other rights of Garic, if the Customer does so all sums whatever owing by the Customer to Garic shall forthwith become due and payable.
- 9.8 The Customer shall insure and keep insured the Goods to the full price against all risks to the reasonable satisfaction of Garic until the date that property in the Goods passes from Garic, and shall whenever requested by Garic produce a copy of the policy of insurance. Without prejudice to the other rights of Garic, if the Customer fails to do so, all sums whatever owing by the Customer to Garic shall forthwith become due and payable.
- 10. ACCEPTANCE OF THE GOODS**
- 10.1 The Customer shall be deemed to have accepted the Goods on delivery of the Goods to the Customer in accordance with clause 8.
- 10.2 After acceptance the Customer shall not be entitled to reject the Goods which are not in accordance with the contract and where the Customer accepts or has been deemed to have accepted any of the Goods then Garic shall have no liability whatever to the Customer in respect of any of the Goods, except for a breach of the warranty contained under clause 12.1.
- 10.3 Acceptance of the Goods shall be deemed to be conclusive evidence of the Customer's acceptance of these conditions.
- 10.4 None of the Goods delivered to the Customer which are in accordance with the contract will be accepted for return without the prior approval in writing of Garic on terms to be determined at the absolute discretion of Garic.
- 10.5 If Garic agrees to accept any of the Goods for return the Customer shall be liable to pay a handling charge of not less than 10% of the invoice price of the Goods or such lesser handling charge as
- Garic may at its absolute discretion decide and which shall be notified in writing to the Customer. Any such of the Goods must be returned by the Customer, carriage paid to Garic, in their original packaging and condition.
- 10.6 Any of the Goods returned without the prior approval in writing of Garic may at Garic's absolute discretion be returned to the Customer or stored at the Customer's cost without prejudice to any rights or remedies Garic may have.
- 10.7 If the Customer properly rejects any of the Goods which are not in accordance with the contract the Customer shall nonetheless pay the full price for any such of the Goods unless the Customer promptly gives notice of rejection to Garic and at the Customer's cost returns any such of the Goods to Garic within 3 (three) days of delivery of the Goods.
- 11. SUPPLY OF WORK**
- 11.1 Garic shall use all reasonable endeavours to meet any performance dates for the Work, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Work.
- 11.2 Garic shall have the right to make any changes to the Work which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Work, and Garic shall notify the Customer in any such event.
- 11.3 Garic warrants to the Customer that the Work will be provided using reasonable care and skill.
- 12. WARRANTIES AND LIABILITY**
- 12.1 Subject to the conditions and limitations set out below in these conditions Garic warrants that the Goods and the Work (where applicable) will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the earlier.
- 12.2 The above warranty is given by Garic subject to the following conditions:
- a) Garic shall be under no liability in respect of any defect in the Goods or the Work arising from any drawing, design or specification supplied by the Customer or where the defect is as a result, whether direct or indirect, of any preparatory work carried out by the Customer in anticipation of the Work;
- Garic shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Garic's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Garic's prior written approval (at all times as determined by Garic);
- Garic shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and the Work (where applicable) has not been paid by the due date for payment;
- the above warranty does not extend to parts, materials or equipment not manufactured by Garic, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Garic.
- 12.3 All terms, conditions and warranties (whether implied or made expressly) whether by Garic or its servants or agents or otherwise (other than those express warranties set out in these conditions) relating to the Goods and/or Works, and without prejudice to the generality of the foregoing of any terms, conditions, warranties relating to fitness for purpose, merchantability or condition of the Goods and/or Works, and whether implied by statute common law or otherwise, are excluded to the fullest extent permitted by law.
- 12.4 Any claim by the Customer which is based on any defect in the quality or condition of the Goods and (where applicable) the provision of the Work or their failure to correspond with specifications shall (whether or not delivery is refused by the Customer) be notified to Garic within 3 (three) days from the date of delivery or in the case of defective workmanship in respect of the Work, the completion of the same or (where the defect or failure was not apparent on reasonable inspection) within 3 (three) days of the defect or failure becoming apparent to the Customer, or when it ought to have been apparent to the Customer. If delivery is not refused, and the Customer does not notify Garic accordingly, the Customer shall not be entitled to reject the Goods and Garic shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods and Work had been delivered and carried out in accordance with the Contract.
- 12.5 Where any valid claim in respect of any of the Goods or Work which is based on any defect in the quality or condition of the Goods or the Work or their failure to meet specification is notified to Garic in accordance with these conditions, Garic shall be entitled to inspect the Goods or the Work on reasonable notice and to repair or replace the Goods (or the part in question) and/or rectify the Work free of charge or, at Garic's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price) and collect the Goods, but Garic shall have no further liability to the Customer.
- 12.6 Garic shall not have any liability for defective Goods or Work in respect of any defect arising from the Customer's wilful damage, negligence, abnormal storage conditions, or the Customer's failure to follow Garic's or the manufacturer's instructions whichever is appropriate (whether oral or in writing) on storage or use, where the Customer has failed to pay Garic in accordance with the terms of the Contract, or where the Customer has altered or repaired the Goods without Garic's prior written consent, or continued to use the Goods after notifying Garic of the defect.
- 12.7 Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors.
- 12.8 Subject to clause 12.7, Garic shall not be liable to the Customer whether for any breach of these conditions or the contract or by reason of any representation or any implied warranty, condition or other term or any duty at common law for any direct or indirect loss, damage (whether for loss of profit or otherwise), costs, expenses or other claims whatsoever and howsoever arising suffered by the Customer or liability to third parties incurred by the Customer (and whether caused by the negligence of Garic, its employees, agents, servants or otherwise) which arise out of or in connection with the supply of the Goods and the supply of the Work or their use or resale by the Customer, except as expressly provided in these conditions.
- 12.9 Notwithstanding any other provision of the Contract, the maximum liability of Garic under or in connection with the Contract shall be limited to the price payable for the Goods or Works.
- 12.10 Garic shall not be liable to the Customer or be deemed to be in breach of the contract or these conditions by reason of any delay in performing, or any failure to perform, any of Garic's obligations in relation to the Goods or the Work, if the delay or failure was due to any cause beyond Garic's reasonable control or the fault of the Customer and prevents performance of the Contract for a

period of 3 months. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Garic's reasonable control:

- a) Act of God, explosion, flood, tempest, fire or accident;  
war or threat of war, sabotage, insurrection, civil disturbance or requisition;

acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

import or export regulations or embargoes;

strikes, lock-outs or other industrial actions or trade disputes or non-availability of employees (whether involving employees of Garic or of a third party);

difficulties in obtaining raw materials, labour, fuel, parts or machinery;

power failure or breakdown in machinery.

weather conditions, transport failures, traffic congestion or any other cause (whether or not of the same nature as the foregoing) which is beyond the control of Garic.

- 12.11 Garic shall not be liable to the Customer for any loss of profit, loss of use, loss of business, special or indirect or consequential loss and damages, howsoever arising

### **13. INDEMNITY**

- 13.1 If any claim is made against Garic or Customer that the Goods or the Work infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, as a result of any information provided by the Customer to Garic in accordance with clause 5 aforesaid the Customer shall indemnify Garic against all loss, damage, costs and expenses awarded against or incurred by Garic in connection with the claim, or paid by Garic in settlement of the claim, and the Customer warrants that:

- a) if requested, Garic is given full control of any proceedings or negotiations in connection with any such claim;

the Customer shall give Garic all reasonable assistance for the purpose of any such proceedings or negotiations;

except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent in writing of Garic (which shall not be unreasonably withheld);

the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);

Garic shall be entitled to the benefit of, and the Customer shall accordingly account to Garic for, all damages and costs (if any) awarded in favour of the Customer which are payable by or agreed with the consent of the Customer in writing (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

without prejudice to any duty of the Customer at common law, Garic shall be entitled to require the Customer to take such steps as Garic may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Garic is liable to indemnify the Customer under this clause.

- 13.2 Without prejudice to clause 13.1 above the Customer agrees to indemnify and keep indemnified Garic, its employees, agents and servants against all loss, damage, claims, expenses and costs (including legal costs and not being limited to financial loss) whatsoever and howsoever arising whether directly or indirectly out of or in connection with any breach by the Customer of any of its obligations under the Contract or in connection with the supply of the Goods and the Work or their use or resale by the Customer.

### **14. TERMINATION AND INSOLVENCY OF CUSTOMER**

- 14.1 This clause applies if:

- a) the Customer is in breach of any of its obligations herein; or  
execution of any judgment is levied on the Customer; or  
the Customer enters into any composition or arrangement with its creditors; or  
the Customer becomes insolvent, calls a meeting with a view to going into voluntary liquidation or if a petition for winding-up shall be presented or a receiver and/or administrator and/or administrative receiver and/or manager is appointed or if the Customer has a liquidator appointed over any of its property or assets or enters into an agreement with its creditors or a mortgagee or encumbrancer takes steps to exercise its security; or if the Customer is presented with an application for an interim order or a bankruptcy petition within the meaning of the Insolvency Act 1986, or if an interim order or bankruptcy order is made against the Customer or if the Customer has a liquidator appointed or if a meeting whether formal or informal is called of the Customer's creditors or any of them or, in Scotland (in addition to such events so far as are applicable detailed above) become notour bankrupt or suffer sequestration to be awarded of the Customer's estate or effects or suffer any arrestment, charge, pouncing or other diligence to be issued or levied upon the Customer or his estate or effects or suffer any exercise or threatened exercise of any landlord's hypothec; or  
the Customer ceases, or threatens to cease, to carry on business; or  
Garic reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

- 14.2 On the occurrence of any of the circumstances listed in clause 14.1 then, without prejudice to any other right or remedy available to Garic, Garic shall be entitled to cancel the Contract or suspend any further deliveries under the contract without any liability to the Customer, and if the Goods have not been delivered and the Work carried out but not paid for the price of the Goods and the Work and all other sums, whatever due to Garic under the Contract and these conditions shall become immediately due and payable notwithstanding any previous agreement or arrangement to the Contract.