

GARIC LTD - TERMS AND CONDITIONS OF HIRE



1. DEFINITIONS

- a) For the purposes of this hire Garic Limited trading as Garic Limited or Welfare Cabins UK shall be deemed to be the Owner of the Plant whether such is the fact or not and the expression "The Owner" shall mean Garic Ltd to the exclusion of any other company or person.
- b) The "Hirer" is the Company, firm, person, Corporation or public authority taking the Owner's Plant on hire and includes their successors or personal representatives.
- c) "Plant" covers all classes of plant, tools, machinery, accommodation, toilets, vehicles (Including Welfare Vans), equipment and accessories therefore, which the Owner agrees to hire to the Hirer pursuant to the Contract.
- d) A "day" shall be 8 hours or if the day is a Friday it shall be 7 hours, unless otherwise specified in the Contract. A "working week" covers the period from starting time on Monday to finishing time on Friday.
- e) The "Hire Period" shall commence from the time when the Plant leaves the Owner's depot or place where last employed and shall continue until the Plant is received back at the Owner's named depot or other agreed location.
- f) The Hire Period includes Saturdays, Sundays or Bank or other statutory holidays
- g) A "Consumer Contract" is a contract entered into with a person acting in his own capacity and not for or on behalf of any business or trade entity.
- h) "Contract" shall be the terms and conditions of hire contained herein together with other contractual documents, in the following order of precedence: any quotation from the Owner given to the Hirer, any order made by the Hirer and any confirmation of that order by the Owner. The Contract constitutes the entire agreement between the parties. The Hirer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Owner which is not set out in the Contract.
- i) "Inspection Report" means the pre and post-delivery inspection of the Plant in respect of operation and condition, carried out by the Owner.
- j) "Hire Delivery Note" means the note recording time and place of delivery to be delivered to the Hirer by the Owner or his employee.
- k) "Head Finance Agreement" means a finance agreement between the Owner and a third party subject to which the Owner has possession of the Plant.
- l) "Head Office" being the Owner's primary place of contact in relation to the hire and notified to the Hirer through inclusion on pre-contractual correspondence.

2. EXTENT OF CONTRACT

- a) No conditions other than specifically set forth shall be deemed to be incorporated in or to form part of the Contract, with the exception of the invoice insofar as it contains the fee payable as consideration for the Contract, or shall otherwise govern the relationship between the Owner and the Hirer in relation to the hire of any particular Plant. The Contract does not create any right enforceable by or purport to confer any benefit on any person not a party to it except a person who is a successor to or an assignee of the rights of the Owner who is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).
- b) The Contract constitutes the entire agreement between the parties. The Hirer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Owner which is not set out in the Contract.

3. ACCEPTANCE OF PLANT

Acceptance of the Plant on site implies unqualified acceptance of all terms and conditions herein unless otherwise agreed in writing by the Owner.

4. UNLOADING AND LOADING

The Hirer shall be responsible for the unobstructed access and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site and any personnel supplied by the Owner for such unloading and/or loading shall be deemed to be under the direction and control of the Hirer. Such personnel shall for all purposes in connection with their employment in the unloading and/or loading of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of Clause 13) who alone shall be responsible for all claims arising in connection with unloading and or loading of the Plant by, or with the assistance of, such personnel.

5. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

- a) Unless notification in writing to the contrary is received by the Owner from the Hirer within three working days of the Plant being delivered to the site, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Contract and to the Hirer's satisfaction, provided that where Plant requires to be erected on site, the periods above stated shall be calculated from the date of completed erection of Plant. The Hirer shall be responsible for its safe keeping, use in a workmanlike manner within the manufacturer's rated capacity and return on the completion of the hire in equal good order (fair wear and tear excepted). Fair wear and tear, to be determined in the Owner's sole discretion, is not to be confused with damage which occurs as a result of a specific event or series of events, such as impact, inappropriate stowing of items, harsh treatment, negligent acts or omissions.
- b) The Hirer shall, when hiring Plant without Owner's operator or driver, take all reasonable steps to keep himself acquainted with the state and condition of the Plant. If such Plant be continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom.
- c) The current inspection Report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner if requested by the Hirer and returned to the Owner on completion of hire.

6. DELIVERY AND COLLECTION

Delivery or Collection undertaken by the Owner is not included in the hire charges and is charged at an additional cost. Cost of delivery will be shown as a separate sum on the invoice. Where the Owner has agreed to provide transport for the Plant to or from the Hirer's site:

The Hirer shall provide or ensure that access to and over the Hirer's site is in every respect suitable for the vehicle used for transporting the Plant.

If the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel, or be transported over without timbers or equivalents the Hirer shall 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.

- a) Where the hire is for lifting equipment, any sound timber or other material supplied by the Owner for use with outriggers/stabilisers is provided solely to assist the Hirer 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.
- b) The Hirer shall load or unload the Plant at the Hirer's site with reasonable diligence and shall not suffer or permit the transport vehicle to be unduly delayed on site. The Owner may charge and at a reasonable rate or specify hourly charge for any delayed delivery.
- c) Pursuant to clause 4, the Hirer shall be responsible for unloading and loading of the Plant and any employee of the Owner shall be under control of the Hirer and act solely to the instruction of the Hirer. The Hirer shall therefore indemnify the Owner against any claims for injury to persons, or loss of or damage to property (including land), during loading or unloading of the Plant.
- d) The Owners shall make reasonable efforts to deliver and collect the Plant at the agreed time, however, the Owner shall not be liable for the consequences of any delay in the delivery or collection at the Hirer's site.
- e) Not less than 24 hours' notice, in writing, must be given to the Owner if the Hirer wishes the Plant to be collected. When Plant out on hire is to be collected from its location by the Owner on the instructions of the Hirer, the Hirer remains responsible for the safekeeping of the Plant until collection is effected being not more than ten working days after the date the Plant is placed off hire.
- f) When Plant is delivered by the Owner, in the absence of the Hirer or his representative, the Hire Delivery Note shall be forwarded to the Hirer's address and deemed to be conclusive proof of delivery of the Plant listed thereon in good clean working order.

7. SERVICING AND INSPECTION

The Hirer shall at all reasonable times allow the Owner, agents of the Owner or the Owner's Insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably possible, such work will be carried out at times to suit the convenience of the Hirer.

8. HANDLING / USE OF PLANT

- a) The Plant shall be used only for the purpose for which it is designed by the makers. The Hirer 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 authorised persons only.
- b) The Hirer shall use the Plant in a skilful and proper manner and the Hirer shall be responsible for its greasing, oiling, etc. The Hirer shall be solely responsible for and shall indemnify the Owner in respect of all damages, losses, costs and expenses arising as a result of not maintaining the plant with correct levels of oil, fuel and grease.
- c) The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Factories Acts, Health and Safety at Work Act 1974, etc., and observance of the Road Traffic Acts should they apply, including the cost of Road Fund Licences and any insurances made necessary thereby, save that if and during such time as the Plant is travelling, whether for full or part journey from Owner to site and site to Owner under his own power with a driver supplied by the Owner, the Owner and not the Hirer shall be responsible as aforesaid.
- d) The Hirer 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 Hirer's responsibility and the Hirer assumes all risk and liability in this regard.
- e) The Hirer shall indemnify the Owner for injury to persons or loss of or damage to property caused by the Hirer's use of the Plant or the Hirer's failure to operate the Plant in a safe and proper manner.
- f) The Owner shall supply a person competent in operating the Plant or for such purpose for which the person is supplied and such shall be under the direction and control of the Hirer. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of Clause 13) who also shall be responsible for all claims arising in connection with the operation of the Plant by the said drivers/operators/persons.
- g) The Hirer shall not allow any other person to operate such Plant without the Owner's previous consent to be confirmed in writing.

9. BREAKDOWN SERVICING AND REPAIRS

- a) When the Plant is hired without the Owner's driver or operator the Hirer shall inform the Owner immediately (or any event within 2 Business Days) of any breakdown or unsatisfactory working of the Plant. The Owner undertakes to deal with necessary repairs as quickly as is reasonably possible. 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 Hirer and confirmed within three days in writing.
- b) Full allowance for the hire charges and for the reasonable cost of repairs that have been authorised by the Owner will be made to the Hirer for any stoppage due to breakdown of Plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of the Contract.
- c) The Hirer shall not, except for the changing of any tyre and repair of punctures, repair the Plant without the written authority of the Owner.
- d) The changing of any tyre and repair of punctures are however the responsibility of the Hirer who should arrange for them to be changed/repaired without awaiting authorisation from the Owner. The Hirer 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 Pirelli fitted when supplied, Pirelli of the same quality must be the replacement).
- e) The Hirer shall take all reasonable steps to keep acquainted with the state and condition of the Plant. If Plant is to be continued at work or in use after it is known by the Hirer to be in an unsafe or unsatisfactory state the Hirer shall be solely responsible for any further damage, loss or accident.
- f) The Hirer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner due to negligence, misdirection or misuse of the Plant whether by the Hirer or other persons and for the payment of hire charges at the Owner's standard rate during the period the Plant is necessarily idle due to such breakdowns or damage.
- g) The Owner will be responsible for the cost of repairs to the Plant involved in breakdowns as a result of fair wear and tear.
- h) Where Plant has been in the possession of the Hirer for a period in excess of the recommended service interval for that item, however that interval is expressed i.e. hours, time etc. it is the responsibility of the Hirer to inform the Owner of the need for the Plant to be serviced. In the event of the Hirer failing to inform the Owner of the need for the Plant to be serviced the Hirer hereby indemnifies the Owner against any claim howsoever arising as a result of the Hirer's continued use of the Plant, beyond the recommended service interval.

10. STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" as herein provided), for stoppages through causes outside the Owner's control, including bad weather or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any Plant from soft ground, which shall be payable by the Hirer at the Owner's standard rates.

11. LOSS OF OTHER PLANT DUE TO BREAKDOWN

Each item of Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed a unit for the purpose of breakdown.

12. LIMITATION OF LIABILITY

Except for liability on the part of the Owner which is expressly provided for in the Contract (including these Clauses):

- a) The Owner 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.
- b) The Owner 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, shall be limited to a maximum aggregate sum of £1,000 for any of the Hirer'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.
- c) Whenever the Contract (including these Clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Hirer'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.

13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

For the avoidance of doubt it is hereby declared and agreed that nothing in this Clause effects of the indemnities contained in Clauses 4, 5, 8 and 12 of this Agreement.

- a) During the continuance of the hire period the Hirer shall, subject to the provisions referred to in sub paragraph (a), make good to the Owner all loss of or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in Clause 9 herein, and shall also fully and completely indemnify the Owner in respect of all claims 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.
- b) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury due to or arising:
 - (i) Prior to delivery of any Plant to the site (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to it leaving such highway) where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner.
 - (ii) After the Plant has been removed from the site and is in transit on a highway maintainable at the public expense (or where the site is not immediately adjacent to a highway maintainable at the public expense after it has joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner.
 - (iii) Where Plant is travelling to or from a site on a highway maintainable at the public expense (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner.

14. LOST, NON-RETURNED, DAMAGED OR UNCLEAN PLANT

- a) When Plant is lost or stolen or cannot be retrieved by the Owner, the hire will be deemed to end when the Hirer pays to the Owner the Owner's invoiced charges for the loss of the Plant. Charges for loss of or damage to Plant will be based on current replacement values with due allowance for fair wear and tear.
- b) Plant deemed by the Owner to be damaged or returned in an unsatisfactory condition will be held for three days for the Hirer to inspect. After the expiration of the third day necessary repairs, servicing or cleaning will be carried out.
- c) The Hirer agrees to pay to the Owner all costs incurred by the Owner in rectifying the condition of Plant returned damaged or unclean. Hire charges will continue until such rectification is complete and the Owner's invoiced charges for the rectification have been paid.
- d) The Hirer is responsible for all costs the Owner may incur in tracking or recovering any lost or stolen Plant.

15. NOTICE OF ACCIDENTS

If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Owner by telephone and confirmed in writing to the Owner's office within three working days. In relation to any claim in respect of which the Hirer is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's consent in writing.

16. RE-HIRING ETC.

The Plant or any part thereof shall not be re-hired, sub-let, or lent to any third party without the written permission of the Owner.

17. CHANGE OF SITE

The Plant shall not be moved from the site to which it was delivered or consigned without the written permission of the Owner.

18. RETURN OF PLANT FOR REPAIRS

If during the hire period the Owner decides that urgent repairs to the Plant are necessary he may arrange for such repairs to be carried out on site or at any location of his nomination. In that event the Owner shall be obliged to replace the Plant with similar Plant if available, the Owner (but without prejudice to any of the provisions of Clauses 9 and/or 13) paying all transport charges involved.

In the event of the Owner being unable to replace the Plant he shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of Clauses 9 and/or 13) by giving written notice to the Hirer. If such termination occurs: within three months from the commencement of hire, the Owner (but without prejudice to any of the provisions of Clauses 9 and/or 13) shall pay all transport charges involved, or, more than three months from the commencement of hire, the Owner (but without prejudice to any of the provisions of Clauses 9 and/or 13) shall be liable only for the cost of reloading and return transport.

19. COMMENCEMENT AND TERMINATION OF HIRING

- a) Hire will commence on the date the Plant leaves the Owner's premises and will terminate on the day it is returned to the Owner's premises. The day of hiring and the day of return will be charged respectively as whole days, 24 hours' notice of termination of hire must be given by the Hirer to the Owner in writing.
- b) The minimum Hire Period is one week and Hirer will be charged for one week's hire even if the duration of hire is less.
- c) The Owner shall not charge the Hirer any hire charges for any period for which an off-hire number has been obtained, but the Hirer shall still be responsible for such hire charges for those items if he is unable to provide the off-hire number to the Owner for that item of Plant. In the event that any item of Plant which is off-hired, is not made available for collection when the Owner attends the site to collect it, such Plant shall be deemed with immediate effect to be placed back on hire, and all hire charges shall be due in accordance with these conditions. The Hirer shall be responsible for the reasonable costs and expenses incurred by the Owner in seeking to collect such off-hired items, by way of an aborted journey charge.
- d) Where a Plant is subject to a Head Finance Agreement the hiring of that Plant may be terminated by Garic Ltd giving 30 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.

20. LEADS

Leads are supplied to the Hirer in good condition. Leads cut or damaged will be charged to the Hirer at the current replacement price.

21. PROTECTION OF OWNER'S RIGHTS

- a) The Hirer 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 and shall indemnify the Owner against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition.
- b) If the Hirer make default in punctual payment of any sum due to the Owner for hire of Plant or other charges or shall fail to observe and perform the terms and conditions of this Contract, or if the Hirer 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 the Owner's rights in the Plant may be prejudiced or put into jeopardy, this Contract may forthwith be determined by notice from the Owner to the Hirer (notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature).
- c) The Contract shall thereupon be deemed determined by reason of the Hirer's breach and it shall be lawful for the Owner to retake possession of the said Plant and for that purpose enter into or upon any premises where the same may be and the determination of the hiring under this Condition shall not affect the right of the Owner to recover from the Hirer any monies due to the Owner under the Contract or any of the Owner's rights and remedies. In particular, without limitation, the Owner shall be entitled to claim the hire charges outstanding as at the date of determination of the hire under this clause, return transport charges, and damages for the Hirer's actual or deemed breach of the Contract under this Clause.
- d) The Hirer shall not remove, deface or cover up the Owner's name plate, Plant number or mark on the Plant indicating that it is his property, unless agreed in writing with the Owner beforehand.

22. MAXIMUM PERIOD OF HIRE FOR UNINCORPORATED BODIES

In accordance with the Consumer Credit Act, if the Hirer is a partnership, sole trader or other unincorporated body, then the contract of hire will not be more than three consecutive calendar months; and the Hirer shall return the Tools and Equipment to the Owner on or before the last day of the aforementioned three calendar month period.

23. ELECTRICAL EQUIPMENT

Where the Plant comprises electrical equipment in part or in whole the same should normally be used with plugs and/or sockets as fitted but if temporarily replaced with other suitable plugs or sockets, this must be carried out by a qualified electrician who must also reinstate to original condition. 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.

24. DETERMINATION OF HIRE

The Owner shall be entitled at any time and for any reason whatsoever, without explanation, to terminate this contract (such termination to be effective immediately) and to repossess the Plant or any part thereof. The Owner shall be entitled to enter upon the premises or site of the Hirer for the purpose of repossessing the Plant and the Hirer shall pay the cost of recovering and collecting the Plant.

25. PAYMENT TERMS

Unless a credit facility has been granted by the Owner to the Hirer, 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 Hire. The Hirer shall pay all sums due to the Owner under this Contract without any set-off, deduction, counter claim and/or any other withholding of monies. Prompt payment of the Owners invoices shall be of the essence and the Owner may terminate the hire in the event that the Hirer fails to comply with the Owners payment terms, which are 30 days unless otherwise agreed by the Owner. Payment shall not be deemed to be made until the Owners have received either cash or cleared funds in respect of the full amount outstanding.

26. RESPONSIBILITIES OF PERSON SIGNING

The person signing the contract warrants that he has authority of the Hirer to make this contract on the Hirer's behalf. The said person hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner if this is not so. The said person hereby acknowledges that he has been instructed in the operation and use of the Plant. The said person and the Hirer jointly and severally hereby undertake to ensure that no one uses the Plant who is not properly instructed and shall not allow the Plant to be misused.

27. HIRE CHARGE CALCULATION

The Owners standard minimum period of hire is 1 week, unless stated otherwise in a quotation or price proposal document or agreed by the Owner in writing.

28. ADVICE

If advice or information is sought from and given by any representative of the Owner, the Hirer understands and accepts that such advice or information is given in good faith and does not relieve or reduce the Hirer's requirement to make his own independent assessment as outlined above.

29. HOLIDAY PERIODS

It is the responsibility of the Hirer to ensure the safekeeping of all Plant hired which is not returned to the Owner before the start of any holiday period. 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. For the avoidance of doubt, the Plant is deemed to be on-hire, and will therefore be charged for, during public/bank holidays and the Hirer is responsible for its safekeeping.

30. SUSPENSIONS

All requests for the suspension of hire charges must be made fourteen days in advance to the Owners in writing. No suspension allowance will be made unless confirmed by the Owner. For the avoidance of doubt, the Plant is deemed to be on-hire during weekends, public/bank holidays or other holiday periods and the Hirer is responsible for its safekeeping. During a period of suspended hire charges, having been agreed in accordance with this clause, the Plant shall remain at the risk of the Hirer and shall be kept in the possession of the Hirer, unless the Owner decides, at his sole discretion, otherwise.

31. AVAILABILITY

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

32. INSURANCE

The Hirer shall take out and maintain insurance against any and all liabilities the Hirer might incur under the Contract provided the same is commercially available. The Hirer shall include the Owner as a loss payee on any such policy. The Owner reserves the right at any reasonable time to require confirmation that the Hirer is complying with its insurance obligations.

33. FUEL

All Plant is not supplied with fuel unless specified at the time of order and paid for by the Hirer. Welfare Vans are supplied with approximately a quarter tank of fuel at commencement of hire. Upon termination of hire, we will fill the tank. Any difference, where there is less than a quarter of a tank of fuel in the vehicle upon return, will be charged at the prevailing Owners rate per litre.

34. INVOICE QUERIES

All invoice queries must be notified in writing to Head Office within 21 days of invoice date. After this time, the query will become void and the invoice will be deemed payable.

35. HIRE CHARGE ALTERATIONS

The Owner shall be entitled to revise or increase the hire rate for any item of Plant by giving seven days written notice to the Hirer's address as detailed in the Contract.

36. NOTICES

Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- 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
- sent by fax to its main fax number.

Any notice shall be deemed to have been received:

- if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 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.
- if sent by fax, at on the next Business Day after transmission.

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.

37. VARIATION

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

38. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement 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.

39. ASSIGNMENT

This agreement 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 this agreement.

40. VAT

All prices shown on delivery or advice notes exclude VAT.

41. HEADINGS

The headings used in these Conditions of Hire are for convenience only and shall not affect the construction thereof.

42. RIGHTS AND REMEDIES

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

43. SEVERANCE

- If any provision or part-provision of this agreement 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 this agreement.
- If one party gives notice to the other of the possibility that any provision or part-provision of this agreement 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.

44. JURISDICTION

If the original site is in England or Wales, the proper law of the Contract shall be English law. If the original site is in Scotland, the Contract shall in all respects be construed and operated as a Scottish contract, and shall

be interpreted in accordance with Scots law. If the original site is in Northern Ireland, the proper law of the Contract shall be Northern Ireland law.

GARIC LTD: TERMS AND CONDITIONS OF SALE



Interpretation and Definitions

In these conditions, unless the context otherwise requires, the following terms shall have the following meanings:

- "Buyer" means the person, firm or company who accepts a quotation of the Seller for the sale of the Goods and (where appropriate) the provision of the Work by the Seller or whose order for the Goods and/or Work is accepted by the Seller.
- "Conditions" means the standard terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- "Contract" means the contract in accordance with these terms for the purchase and sale of the Goods or, as the case may be, the purchase and sale of the Goods and/or the provision of Work comprising (in the following order of precedence) these terms: any quotation from the Seller to the Buyer, any order made by the Buyer and any confirmation of that order by the Seller.
- "Goods" means the Goods (including any instalments of the Goods or any parts for them) which the Buyer agrees to buy from the Seller in accordance with these conditions.
- "Seller" means Garic Limited (registered in England under company number 2220727).
- "Supplier" means Garic Limited (registered in England under company number 2220727).
- "Work" means the services carried out by the Seller on behalf of the Buyer under these conditions.
- "Writing" includes email, telex, cable, facsimile transmission and any comparable means of communication accepted by the Seller.

1. Relationship

- The Seller shall sell the Goods and carry out the Work (if applicable) and the Buyer shall purchase the Goods and the Work in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written or verbal order of the Buyer which is accepted in writing by the Seller, 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 Buyer and all orders for the Goods and the Work shall be deemed to be an offer by the Buyer to purchase the Goods and the Work pursuant to these conditions.
- These conditions shall apply to all contracts for the sale of the Goods and supply of the Work by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 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 the Supplier which is not set out in the Contract.
- No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- The Seller's employees or agents are not authorised to make any representations concerning the Goods or Work unless confirmed by the Seller in writing. In entering into the contract the Buyer acknowledges that it is not entitled to rely on any such representations which are not so confirmed in writing and the Seller shall not be liable for any loss or damage howsoever arising suffered by the Buyer in reliance on any such representations.
- Any advice or recommendation given by the Seller, its employees or agents to the Buyer, its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is relied upon entirely at the Buyer's own risk, and the Seller shall not be liable for any such advice or recommendation which is not so confirmed and the Seller shall not be liable for any loss or damage whatsoever or howsoever arising suffered by the Buyer in reliance upon the advice or recommendation.
- 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 the Seller shall be subject to correction entirely at the Seller's discretion and without any liability on the part of the Seller.

2. Order and Specifications

- No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed (in writing) by an authorised representative of the Seller.
- The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer and for ensuring the accuracy of all specifications, patterns, drawings, photographs, samples, designs and information provided by the Buyer to the Seller relating to the Goods and the Work and the Buyer shall supply all such information relating to the Goods and the Work within a reasonable time to enable the Seller to perform the contract in accordance with these conditions.
- The Goods and the Work where applicable shall be manufactured and supplied in accordance with the description, specifications, quantity and quality set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- Where any specifications, patterns, drawings, photographs, samples, designs and information relating to the Goods and the Work have been provided by the Buyer the copyright, design right, or other intellectual property in them shall remain the property of the Buyer and where the Goods are to be manufactured, assembled, supplied or any process is to be applied to the Goods by the Seller in accordance with any specifications, patterns, drawings, photographs, samples, designs and information supplied by the Buyer, the Buyer 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 Buyer shall indemnify and keep the Seller indemnified, for all loss, damage, costs and expenses including legal costs whatsoever and howsoever arising resulting from a breach by the Buyer of this clause or which results from the Seller's use of the information aforesaid supplied by the Buyer, in accordance with clause 11 hereof.
- The Seller 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.
- No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that if cancelled more than 7 days before delivery then the Buyer must pay the reasonable costs incurred by the Seller to the date of cancellation; but if cancelled less than 7 days before delivery then the Buyer shall indemnify the Seller 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 the Seller as a result of cancellation by the Buyer.

2. Price of the Goods/Work

- 2.1. Subject to contrary written agreement between the Seller and the Buyer the price of the Goods and the Work (where applicable) shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller'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 Buyer, after which time all prices may be altered by the Seller without giving notice to the Buyer.
- 2.2. The Seller reserves the right, by giving notice to the Buyer 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 the Seller which is due to any factor beyond the reasonable control of the Seller (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 Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 2.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods other than at the Seller's premises or to arrange for the Goods to be delivered other than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport, craneage, packaging and insurance.
- 2.4. All prices are exclusive of value added tax, which shall be payable by the Buyer to the Seller in addition to any other sums due at the rate ruling on the date of the Seller's invoice.
- 3. Terms of Payment**
 1. Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of Goods and the Work prior to, on, or at any time after delivery of the Goods or provision of the Work.
 2. The Buyer shall pay the price of the Goods and/ or Work, and all other sums due to the Seller, (without deduction) within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the contract. Receipts for payment will be issued only upon request.
 3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 4. 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 Buyer;
 5. appropriate any payment made by the Buyer for such of the Goods or Work (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 6. charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent 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. The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Buyer may have or allege to have for any reason whatsoever.
- 2. Delivery**
 - 2.1. Unless otherwise agreed in writing delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection. Save where the Goods are to be collected by the Buyer from the Seller's premises the Buyer shall be deemed to have collected the Goods from the Seller's premises at the time the Goods are handed over at the Seller's premises to the haulage contractor engaged by the Seller on behalf of the Buyer to transport the Goods to the Buyer's premises. The cost of such transportation shall be borne by the Buyer.
 - 2.2. Any dates for delivery quoted by the Seller in relation to the Goods are estimates only and the Seller shall not be liable for any loss or damage whatsoever due to the failure by the Seller 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 the Seller in writing.
 - 2.3. The Seller has the right to deliver the Goods in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
 - 2.4. The Seller 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 the Seller to deliver any one or more of the instalments on the due dates shall not entitle the Buyer to treat the whole contract as repudiated.
 - 2.5. If the Seller fails to deliver the Goods and (where applicable) to carry out the Work for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is liable to the Buyer for a breach of these conditions the remedies of the Buyer shall be limited to those set out in Clause 10.8.
 - 2.6. Notwithstanding any other provision of these terms and conditions the failure of the Buyer to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller (at the Seller's absolute discretion) without notice to suspend further deliveries of the Goods pending payment by the Buyer and/or to treat the contract as repudiated by the Buyer.
 - 2.7. If the Buyer fails to take delivery of the Goods at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's default) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 2.8. store the Goods until actual delivery and charge the Buyer for all reasonable costs (including insurance) of storage; or
 - 2.8.1. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the contract.
 - 2.8.2. The Seller may cancel this contract at any time before the Goods are delivered by giving notice in writing. The Seller shall not be liable for any loss or damage whatsoever or howsoever arising from such cancellation.
- 3. Risk and Title**
 - 3.1. The Goods shall be at the Buyer's risk from:
 - 3.2. in the case of the Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - 3.3. in the case of the Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller had tendered delivery of the Goods.
 - 3.4. 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 Buyer until the Seller 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 the Seller to the Buyer for which payment is then due and until there are no other sums whatever due from the Buyer to the Seller under the Contract or these conditions.
 - 3.5. **Until such time as the Buyer passes to the Buyer in accordance with clause 7.2, the Buyer shall:**
 - 3.5.1. hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property;
 - 3.5.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 3.5.3. notify the Supplier immediately if it becomes subject to any of the events listed 12.1.4;
 - 3.5.4. give the Supplier such information relating to the Goods as the Supplier may require from time to time.
 - 3.6. Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until title in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
 - 3.7. The Seller shall be entitled to recover the price (plus VAT) notwithstanding that title in any of the Goods has not passed from the Seller.
 - 3.8. Until such time as property in the Goods passes from the Seller, the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 7.6 shall cease.
 - 3.9. The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
 - 3.10. The Buyer shall insure and keep insured the Goods to the full price against all risks to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so, all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 4. Acceptance of the Goods**
 - 4.1. The Buyer shall be deemed to have accepted the Goods on delivery of the Goods to the Buyer in accordance with clause 6.
 - 4.2. After acceptance the Buyer shall not be entitled to reject the Goods which are not in accordance with the contract and where the Buyer accepts or has been deemed to have accepted any of the Goods then the Seller shall have no liability whatever to the Buyer in respect of any of the Goods, except for a breach of the warranty contained under clause 10.1.
 - 4.3. Acceptance of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these conditions.
 - 4.4. None of the Goods delivered to the Buyer which are in accordance with the contract will be accepted for return without the prior approval in writing of the Seller on terms to be determined at the absolute discretion of the Seller.
 - 4.5. If the Seller agrees to accept any of the Goods for return the Buyer 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 the Seller may at its absolute discretion decide and which shall be notified in writing to the Buyer. Any such of the Goods must be returned by the Buyer carriage paid to the Seller in their original packaging and condition.
 - 4.6. Any of the Goods returned without the prior approval in writing of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.
 - 4.7. If the Buyer properly rejects any of the Goods which are not in accordance with the contract the Buyer shall nonetheless pay the full price for any such of the Goods unless the Buyer promptly gives notice of rejection to the Seller and at the Buyer's cost returns any such of the Goods to the Seller before the date when payment for the Goods is due.
- 5. Supply of Work**
 - 5.1. The Supplier 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.
 - 5.2. The Supplier 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 the Supplier shall notify the Buyer in any such event.
 - 5.3. The Supplier warrants to the Buyer that the Work will be provided using reasonable care and skill.
- 6. Warranties and Liability**
 - 6.1. Subject to the conditions and limitations set out below in these conditions the Seller 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.
 - 6.2. The above warranty is given by the Seller subject to the following conditions:
 - 6.2.1.1. the Seller 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 Buyer or where the defect is as a result, whether direct or indirect, of any preparatory work carried out by the Buyer in anticipation of the Work;
 - 6.2.1.2. the Seller 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 the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's prior written approval;
 - 6.2.1.3. the Seller 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;
 - 6.2.1.4. the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
 - 6.3. All terms, conditions and warranties (whether implied or made expressly) whether by the Seller 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.
 - 6.4. Any claim by the Buyer 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 Buyer) be notified to the Seller within 7 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 a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and Work had been delivered and carried out in accordance with the contract.

- 6.5. 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 the Seller in accordance with these conditions, the Seller shall be entitled to repair or replace the Goods (or the part in question) and/or rectify the Work free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 6.6. 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.
- 6.7. Subject to clause 10.6, the Seller shall not be liable to the Buyer 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 Buyer or liability to third parties incurred by the Buyer (and whether caused by the negligence of the Seller, 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 Buyer, except as expressly provided in these conditions.
- 6.8. Notwithstanding any other provision of these conditions in the event of any breach of the contract or of these conditions by the Seller the remedies of the Buyer shall be limited to damages and under no circumstances shall the liability of the Seller exceed the price payable for the Goods.
- 6.9. The Seller shall not be liable to the Buyer 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 the Seller's obligations in relation to the Goods or the Work, if the delay or failure was due to any cause beyond the Seller's reasonable control or the fault of the Buyer 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 the Seller's reasonable control:
- 6.9.1. Act of God, explosion, flood, tempest, fire or accident;
- 6.9.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 6.9.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 6.9.4. import or export regulations or embargoes;
- 6.9.5. strikes, lock-outs or other industrial actions or trade disputes or non-availability of employees (whether involving employees of the Seller or of a third party);
- 6.9.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 6.9.7. power failure or breakdown in machinery.
- 6.9.8. 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 the Seller.
- 7. Indemnity**
- 7.1. If any claim is made against the Seller or Buyer 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 Buyer to the Seller in accordance with clause 3 aforesaid the Buyer shall indemnify the Seller against all loss, damage, costs and expenses awarded against or incurred by the Seller in connection with the claim, or paid by the Seller in settlement of the claim, and the Buyer warrants that:
- 7.1.1. if requested, the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 7.1.2. the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;
- 7.1.3. except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent in writing of the Seller (which shall not be unreasonably withheld);
- 7.1.3.1. the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 7.1.3.2. the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer in writing (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 7.1.3.3. without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.
- 7.2. Without prejudice to clause 11.1 above the Buyer agrees to indemnify and keep indemnified the Seller, 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 Buyer of any of its obligations under these conditions or the contract or in connection with the supply of the Goods and the Work or their use or resale by the Buyer.
- 8. Termination and Insolvency of Buyer**
- 8.1. This clause applies if:
- 8.1.1. the Buyer is in breach of any of its obligations herein; or
- 8.1.2. execution of any judgement is levied on the Buyer; or
- 8.1.3. the Buyer enters into any composition or arrangement with its creditors; or
- 8.1.3.1. the Buyer 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 Buyer 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 Buyer 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 Buyer or if the Buyer has a liquidator appointed or if a meeting whether formal or informal is called of the Buyer'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 Buyer's estate or effects or suffer any arrestment, charge, pinding or other diligence to be issued or levied upon the Buyer or his estate or effects or suffer any exercise or threatened exercise of any landlord's hypothec; or
- 8.1.4. the Buyer ceases, or threatens to cease, to carry on business; or
- 8.1.5. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 8.2. On the occurrence of any of the circumstances listed in clause 12.1 then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer, 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 the Seller under the contract and these conditions shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 9. General**
- 9.1. The contract and these conditions shall be governed by English law in every particular including formation and interpretation and both parties submit to the jurisdiction of the English Courts.
- 9.2. Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 9.3. No waiver by the Seller of any breach of the contract or these conditions by the Buyer shall be considered as a waiver of that right or of any subsequent breach of the same or any other provision or, of the right at any time subsequently to enforce all of the Seller's rights under these conditions or the contract.
- 9.4. If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.
- 9.5. If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR
- 9.6. Any reference in these conditions to any statutory provision shall be construed as a reference to that statutory provision or as a reference to that provision as amended, re-enacted or extended whichever shall be in force at the time.
- 9.7. The headings in these conditions are for convenience only and shall not affect the interpretation of these conditions.
- 9.8. The receipt of money by either of parties shall not prevent either of them from questioning the correctness of any statement in respect of such money.
- 9.9. These conditions supersede any prior agreement between the parties whether written or oral and any such prior agreements are superseded by these conditions.
- 9.10. All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout these conditions shall include all genders and the plural.
- 9.11. These conditions and the contract and all rights under them may not be assigned or transferred by the Buyer except with the Seller's prior consent in writing.
- 9.12. All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under these conditions shall restrict or prejudice the exercise of any other right granted by these conditions or otherwise available to them.
- 10. Jurisdiction**
- 10.1. 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 this Contract or its subject matter or formation (including non-contractual disputes or claims).
- The Buyer hereby: -
- (i) acknowledges receipt of these conditions; and
- (ii) acknowledges and accepts these conditions as governing the trading relationship between the Seller and the Buyer.