CONDITIONS FOR HIRE AND SALE OF GOODS TO CONSUMERS AND BUSINESSES

1 INTERPRETATION

1.1 In these conditions the following words have the following meanings:
"Consumer" an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;
"Contract" means a contract which incorporates these conditions and made between the Customer and the Supplier for the hire or sale of Goods;
"Customer" means the person, firm, company or other organisation hiring Hire Goods or purchasing Sale Goods;
"Deposit" means any advance payment required by the Supplier in relation to the Hire Goods which is to be held as security by the Supplier;
"Digital Content" means data which is produced and supplied in digital form;
"Force Majeure" means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events;
"Goods" means any machine, article, tool, and/or device together with any accessories specified in a Contract which are hired or sold to the Customer;
"Hire Goods" means any Goods which are hired to the Customer;
"Hire Period" means the period commencing when the Customer holds the Hire Goods on hire (including Saturdays Sundays and Bank Holidays) and ending upon the happening of any of the following events:
(i) the physical return of the Hire Goods by the Customer into the Supplier's possession; or
(ii) the physical repossession or collection of Hire Goods by the Supplier;
"Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
"Rental" means the Supplier's charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period;
"Sale Goods" means any Goods which are sold to the Customer;
"Supplier" means **P. & T.C. Barnwell (Birtley) Ltd. Mitchell House, Ravensworth Road, Birtley, Co. Durham DH3 1EW** and will include its employees, servants, agents and/or duly authorised representatives;
"Services" means the services and/or work (if any) to be performed by the Supplier for the Customer in conjunction with the hire or sale of Goods including any delivery and/or collection service in respect of the Goods.

2 BASIS OF CONTRACT

2.1 Goods are hired or sold subject to them being available for hire or sale to the Customer at the time required by the Customer. The Supplier will not be liable for any loss suffered by the Customer as a result of the Goods being unavailable for hire or sale where the Goods are unavailable due to circumstances beyond the Supplier's control.
2.2 Where hire of the Hire Goods is to a Customer who is an individual, unincorporated entity or a two (2) or three (3) partner business, and the hire would be covered by the Consumer Credit Act 1974, the duration of the Hire Period shall not exceed 3 months, after which time the Contract shall be deemed to have automatically terminated. Accordingly the hire of any Hire Goods is not covered by the Consumer Credit Act 1974. In such circumstances, the Customer shall return the Hire Goods to the Supplier on the final day of the 3 month Hire Period. If the Customer fails to do this then it shall be liable for any financial loss which this causes the Supplier.
2.3 Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a Consumer. Where the Customer is acting as a Consumer any provision which is marked with an asterisk (*) may, subject to determination by the Courts or any applicable legislation, have no force or effect and if any provision is under the applicable law of the Contract unenforceable in whole or in part or shall have no force or effect the Contract shall be deemed not to include such provisions but this shall not effect the enforceability of the remainder of the Contract. For further information about your statutory rights contact your local authority Trading Standards Department or Citizens Advice Bureau or if based in the Republic of Ireland your local office of the Director of Consumer Affairs or Citizens Information Centre.

3 FAULTY GOODS, DIGITAL CONTENT AND/OR SERVICES

3.1 Where the Customer deals as a Consumer, the Supplier is under a legal duty to supply Goods, Digital Content and Services that are in conformity with the contract between the parties. In such circumstances, the Customer has legal rights in relation to Goods and Digital Content that are, for example, faulty or not as described and in relation to Services that are, for example, not carried out with reasonable skill and care, or if the materials used to carry out the Services are faulty or not as described.
3.2 Advice about Customers' legal rights where they deal as a Consumer is available from their local Citizens' Advice Bureau or Trading Standards office. Nothing in these conditions will affect these legal rights.

4 PAYMENT

4.1 The amount of any Deposit, Rental, monies for Sale Goods and/or charges for any Services shall be as quoted to the Customer or otherwise as shown in the Supplier's current price list from time to time. Where a Deposit is required for the Hire Goods it must be paid in advance of the Customer hiring the Hire Goods. The Supplier may also require an initial payment on account of the Rental in advance of the Customer hiring the Hire Goods.
4.2 The Customer shall pay the Deposit, Rental, charges for any Services, monies for any Sale Goods and/or any other sums payable under the Contract to the Supplier at the time and in the manner agreed. The Supplier's prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable.
4.3 Payment by the Customer on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash or cleared funds in respect of the full amount outstanding.
4.4 *If the Customer fails to make any payment in full on the due date the Supplier may charge the Customer interest (both before and after judgment/decree) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of the Supplier's bank whichever is higher.
4.5 *The Customer shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
4.6 The Supplier may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend the Contract for hire of the Hire Goods and/or the provision of Services if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.
4.7 The Supplier reserves the right to store the Customer's credit card details on its password protected customer account system and further reserves the right to use such details against future Rentals made by the Customer.

5 RISK, OWNERSHIP AND INSURANCE

5.1 Risk in the Goods will pass immediately to the Customer when they leave the physical possession or control of the Supplier.
5.2 Risk in the Hire Goods will not pass back to the Supplier from the Customer until the Hire Goods are back in the physical possession of the Supplier. This shall apply even if the Supplier has agreed to cease charging the Rental.
5.3 Ownership of the Hire Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer. Ownership of any Sale Goods remains with the Supplier until all monies payable to the Supplier by the Customer for the Sale Goods have been paid in full.
5.4 Until ownership in the Sale Goods passes to the Customer, the Customer shall:-
5.4.1 hold the Sale Goods on a fiduciary basis as the Supplier's bailee;
5.4.2 maintain the Sale Goods in satisfactory condition; and
5.4.3 keep the Sale Goods insured against all risks for their full price from the time they leave the physical possession or control of the Supplier.
5.5 The Customer must not deal with the ownership or any interest in the Hire Goods. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending. However the Customer may re-hire the Hire Goods to a third party with the prior written consent of the Supplier.
5.6 The Supplier may provide reasonably priced insurance in respect of the Hire Goods at an additional cost to the Rental. Alternatively the Supplier may require the Customer to insure the Hire Goods for such reasonable risks as the Supplier may specify and any proceeds of any such insurance shall be paid to the Supplier on demand. The Customer must not compromise any claim in respect of the Hire Goods and/or any associated insurance without the Supplier's written consent.

6 DELIVERY, COLLECTION AND SERVICES

6.1 It is the responsibility of the Customer to collect the Goods from the Supplier, and, in the case of Hire Goods, return them to the Supplier at the end of the Hire Period. If the Supplier agrees to deliver Goods to and/or collect the Hire Goods from the Customer it will do so at its standard delivery cost and such delivery and/or collection will form part of the Services.
6.2 If the Supplier agrees to collect the Hire Goods from the Customer at the end of the Hire Period the Customer must give the Supplier reasonable notice which shall include at least three (3) working days' notice from the end of the Hire Period. The Customer shall remain responsible and liable for any loss, damage or theft to the Hire Goods until the Hire Goods are collected by the Supplier unless the Supplier fails to collect the Hire Goods within 5 working days of the Customer notifying the Supplier that the Hire Goods are ready for collection whereupon the Supplier shall be liable for any loss, damage or theft thereafter.
6.3 Where the Supplier provides Services the persons performing the Services are servants of the Customer and once the Customer instructs such person they are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice except to the extent that the persons performing the Services are found to be negligent by a court with jurisdiction to make such finding pursuant to clause 14.8.
6.4 The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to utilities for the Supplier's employees, sub- contractors and/or agents to allow them to carry out the Services. The Customer will ensure that the site where the Services are to be performed is, where necessary, cleared and prepared before the Services are due to commence.
6.5 If any Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation except where the Customer is acting as a Consumer and the delay is due to a Force Majeure event.

7 CARE OF HIRE GOODS

7.1 The Customer shall:
7.1.1 not remove any labels from and/or interfere with the Hire Goods, their working mechanisms or any other parts of them and shall take reasonable care of the Hire Goods and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer;
7.1.2 notify the Supplier immediately after any breakdown, loss and/or damage to the Hire Goods;
7.1.3 take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;
7.1.4 notify the Supplier of any change of its address and upon the Supplier's request provide details of the location of the Hire Goods;
7.1.5 permit the Supplier at all reasonable times and upon reasonable notice to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;
7.1.6 keep the Hire Goods at all times in its possession and control and not to remove the Hire Goods from the country where the Customer is located and/or the country where the Supplier is located without the prior written consent of the Supplier;
7.1.7 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hire Goods required by any legislation, best practice and/or operating instructions except to the extent that the Supplier has agreed to provide them as part of any Services;
7.1.8 not do or omit to do anything which the Customer has been notified will or may be deemed to invalidate any policy of insurance related to the Hire Goods;
7.1.9 not continue to use Hire Goods where they have been damaged and will notify the Supplier immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person; and
7.1.10 where the Hire Goods require fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Hire Goods are properly installed by a qualified and competent person.
7.1.11 ensure that any employees, agents or contractors that operate the Hire Goods are, if applicable, adequately and sufficiently qualified and trained to operate the Hire Goods in accordance with all current and applicable legislation.
7.2 The Hire Goods must be returned by the Customer in good working order and condition (fair wear and tear excepted) and in a clean condition together with all insurance policies, licences, registration and other documents relating to the Hire Goods.

8 BREAKDOWN

8.1 Allowance may be made in relation to the Rental to the Customer for any non-use of the Hire Goods due to breakdown caused by the development of an inherent fault and/or fair wear and tear on condition that the Customer informs the Supplier as soon as practicable of the breakdown and the Supplier is unable to repair or replace the Hire Goods within a reasonable time.
8.2 The Customer shall be responsible for all expenses, loss (including loss of Rental) and/or damage suffered by the Supplier arising from any breakdown of the Hire Goods due to the Customer's negligence, misdirection and/or misuse of the Hire Goods.
8.3 The Supplier will at its own cost carry out all routine maintenance and repairs to the Hire Goods during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Hire Goods. The Customer will be responsible for the cost of all repairs necessary to Hire Goods during the Hire Period which arise otherwise than as a result of fair wear and tear, an inherent fault and/or the negligence of the Supplier while carrying out routine maintenance and/or repairs.
8.4 The Customer must not repair or attempt to repair the Hire Goods unless authorised to do so in writing by the Supplier.

9 LOSS OR DAMAGE TO THE HIRE GOODS

9.1 If the Hire Goods are returned in damaged, unclean and/or defective state except where due to fair wear and tear and/or an inherent fault in the Hire Goods, the Customer shall be liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire and to pay the Rental, in accordance with the provisions of clause 8.3, until such repairs and/or cleaning have been completed.
9.2 In respect of any Hire Goods which are lost, stolen or damaged beyond economic repair during the Hire Period the Customer will:-
9.2.1 pay to the Supplier the new replacement cost for any Hire Goods less than twelve (12) months old from first registration; and/or
9.2.2 reimburse the Supplier for any loss or costs suffered or incurred by the Supplier for any Hire Goods more than twelve (12) months old from first registration, less the amount paid to the Supplier under any policy of insurance and/or Deposit in respect of the Hire Goods.
9.3 The Customer shall remain liable to pay the Rental for the Hire Goods up to and including the date it notifies the Supplier that the Hire Goods have been lost, stolen and/or damaged beyond economic repair.
9.4 In addition to the obligation in clause 9.3 to pay the Rental, from the date the Customer notifies the Supplier that the Hire Goods have been lost, stolen and/or damaged beyond economic repair until the date the Customer makes a payment to the Supplier for the replacement of the Hire Goods in accordance with clause 9.2 ("Lost Rental Period"), the Customer shall pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages being equal to two thirds of the Rental that would have applied for such Hire Goods during the Lost Rental Period. The Supplier shall use its reasonable commercial endeavours to purchase replacements for such Hire Goods as quickly as possible once it has received payment from the Customer under clause 9.2 above.

10 STATUTORY CANCELLATION RIGHT FOR CONSUMERS

10.1 The provisions of this clause 10 only apply to Customers who are a Consumer for the purpose of any hire or purchase from the Supplier.
10.2 Subject to clauses 10.4 and 10.5, in the case of all Contracts for Sale Goods and those Contracts for Hire Goods where the Hire Period does not have a fixed duration, the Customer shall, in accordance with its rights under the Consumer Contracts (information, Cancellation and Additional Charges) Regulations 2013, have the right to cancel the Contract without incurring any charge or Liability within 14 days of the day following the date on which the Goods come into the physical possession of the Customer.
10.3 Where a Customer exercises its right to cancel under clause 10.1 and has made payments in advance for Goods and/or Services that have not been provided to it, then the Supplier will refund these amounts to the Customer:
10.3.1 within 14 days of receipt of the Goods which have been returned by the Customer; or
10.3.2 (if earlier) within 14 days after the day the Customer provides evidence that they have returned the Goods; or
10.3.3 if no Goods have been provided by the Supplier, 14 days after the day on which the Supplier is informed of the Customer's decision to cancel the Contract.
10.4 Where the Customer deals as a Consumer and requests in writing that the Supplier begins provision of the Services within the cancellation period set out in clause 10.1, then the Customer's right to cancel the Contract without incurring any charge or Liability will expire once the Supplier has completed the provision of the Services. If the Customer cancels the Contract once the Supplier has begun to provide the Services it shall be liable for all costs reasonably incurred by the Supplier in providing the Services up to the point the Supplier is informed of the Customer's decision to cancel the Contract.
10.5 Where the Contract is with a Consumer and:
10.5.1 is for the supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities; and
10.5.2 provides for a specific date or period of performance,
the Consumer will not have a right to cancel the Contract without incurring any charge or Liability to the Supplier.
10.6 Where a Customer cancels the Contract under this clause 10, it shall return any Goods which the Supplier has provided to it at its own cost, unless otherwise expressly agreed in writing.

11 TERMINATION BY NOTICE

11.1 If the Hire Period has a fixed duration, then subject to the provisions of clause 12 neither the Customer nor the Supplier shall be entitled to terminate the Contract before the expiry of that fixed period unless agreed with the other party.
11.2 If the Hire Period does not have a fixed duration either of the Customer or the Supplier is entitled to terminate the Contract upon giving to the other party any agreed period of notice.
11.3 If no period of notice has been agreed or specified the Customer may terminate the Hire Period by the physical return of the Hire Goods to the Supplier.
11.4 If no period of notice has been agreed or specified either party shall be entitled to terminate the hire of the Hire Goods by giving not less than 14 days' notice to the other.
11.5 The rights set out in this clause 11 are in addition to any rights the Customer may have under clause 10 (and any other legal rights).

12 DEFAULT

12.1 If the Customer:-
12.1.1 fails to make any payment to the Supplier when due without just cause;
12.1.2 breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
12.1.3 persistently breaches the terms of the Contract;
12.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
12.1.5 pledges, charges or creates any form of security over any Hire Goods or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any property of the Customer, has a bankruptcy petition/petition for sequestration presented against it or the Customer takes or suffers any similar action in any jurisdiction;
12.1.6 being a company, ceases or threatens to cease to carry on business, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of its assets, any attachment order/arrestment is made against the Customer, any distress/diligence, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;
12.1.7 appears to the Supplier (acting reasonably) due to the Customer's credit rating to be financially incapable of meeting its obligations under the Contract; and/or
12.1.8 appears to the Supplier (acting reasonably) to be about to suffer any of the above events;
then the Supplier shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 12.2below.
12.2 If any of the events set out in clause 12.1 above occurs in relation to the Customer then:-
12.2.1 except where the Customer is acting as a Consumer the Supplier may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Goods owned by the Supplier may be and repossess any Goods;
12.2.2 the Supplier may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with the Customer;
12.2.3 the Supplier may immediately cancel, terminate and/or suspend without Liability to the Customer the Contract and/or any other contract with the Customer; and/or
12.2.4 *all monies owed by the Customer to the Supplier shall immediately become due and payable.
12.3 Any repossession of the Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach which occurred prior to repossession of the Goods.
12.4 Upon termination of the Contract the Customer shall immediately:-
12.4.1 return the Goods to the Supplier or, as requested by the Supplier, make the Goods available for collection by the Supplier or its authorised representatives (the Customer granting or procuring for the Supplier or its authorised representative the right to enter the site without trespass) ; and
12.4.2 pay to the Supplier all arrears for Rentals, Charges for any Services, monies for any Sale Goods and/or any other sums payable under the Contract including, but not limited to, the cost of returning the Goods.

13 LIMITATIONS OF LIABILITY

13.1 *All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.
13.2 *If the Supplier is found to be liable in respect of any loss or damage to the Customer's property the extent of the Supplier's Liability will be limited to the retail cost of replacement of the damaged property.
13.3 Any defective Goods must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any Liability for defective Goods.
13.4 *The Supplier shall have no Liability to the Customer if, without just cause, any monies due in respect of the Goods and/or the Services have not been paid in full by the due date for payment.
13.5 The Supplier shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
13.6 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer.
13.7 *The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.
13.8 The Supplier shall have no Liability to the Customer for any of the following losses (whether direct or indirect):-
13.8.1 *consequential losses (including loss of profits and/or damage to goodwill);
13.8.2 economic and/or other similar losses;
13.8.3 special damages and indirect losses; and/or
13.8.4 business interruption, loss of business, contracts and/or opportunity.
13.9 *The Supplier's total Liability to the Customer under and/or arising in relation to any Contract shall not exceed 5 times the amount of the Rental or monies payable for Sale Goods, in addition to charges for Services (if any) under that Contract or the sum of £1,000 (or Euro equivalent) whichever is the higher. To the extent that any Liability of the Supplier to the Customer would be met by any insurance of the Supplier then the Liability of the Supplier shall be extended to the extent that such Liability is met by such insurance.
13.10 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:-
13.10.1 Liability for breach of contract;
13.10.2 *Liability in tort/delict (including negligence); and
13.10.3 *Liability for breach of statutory and/or common law duty;
except clause 13.9 above which shall apply once only in respect of all the said types of Liability.
13.11 Nothing in this Contract shall exclude or limit the Liability of the Supplier for fraud, death or personal injury due to the Supplier's negligence, nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

14 GENERAL

14.1 Upon termination of the Contract the provisions of clauses 4.2, 4.4, 4.5, 7, 8, 9.1, 9.3 and shall continue in full force and effect.
14.2 Each hire of an item of Hire Goods shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Goods.
14.3 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.
14.4 When dealing as a Consumer, if the Customer has any questions or complaints it may contact the Supplier by telephoning its customer service team on **0191 410 7930**
14.5 *The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Supplier and arising from or due to any breach of contract, any tortious/delictual act and/or omission and/or any breach of statutory duty by the Customer.
14.6 *No waiver by the Supplier of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
14.7 The Supplier shall have no Liability to the Customer for any delay and/or non-performance of a Contract to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
14.8 All third party rights are excluded and no third parties shall have any rights to enforce the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999. This shall not apply to any finance company with whom the Supplier has an outstanding finance agreement relating to the Hire Goods. Such finance company shall, subject to the Supplier's consent, have the right to enforce this Contract as if they were the Supplier.
14.9 This Contract is governed by and interpreted in accordance with the law of the country where the Supplier is located and that country will have exclusive jurisdiction in relation to this Contract.

© Hire Association Europe October 2015