

WRIGHTS OF TWYXCROSS LIMITED

EQUIPMENT HIRE TERMS & CONDITIONS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF *CLAUSE 8* (LIMITATION OF LIABILITY).

1. INTERPRETATION

Terms defined in the Contract Details shall, unless otherwise defined in these Conditions, have the same meaning in these Conditions. In addition, the following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

- "Business Day"** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- "Conditions"** means these terms and conditions as amended from time to time in accordance with clause 13.7.
- "Contract"** means the contract between Wrights of Twycross and the Customer for the hire of the Equipment in accordance with these Conditions including the Contract Details.
- "Contract Details"** means the specific details for the Contract as set out in the contract details document provided to the Customer – Equipment Hire Document.
- "Delivery"** means the transfer of physical possession of the Equipment to the Customer or the point at which the Equipment is deemed to have been delivered in accordance with clause 6.4.
- "Delivery Date"** means:-
- (1) in the case of Equipment that is to be delivered to the Customer, the date stated for delivery in the Contract Details or such other date for delivery as is notified to the Customer by Wrights of Twycross after the date of this Contract but before the date for delivery stated in the Contract Details; or
 - (2) in the case of Equipment that is to be collected by the Customer, the date on which Wrights of Twycross notifies the Customer that such Equipment is ready for collection.
- "Deposit"** means the deposit amount set out in the Contract Details.
- "Equipment"** means the items of equipment listed in the Contract Details, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.
- "Order"** means the Customer's order for Equipment as set out in the Customer's purchase order form or the Customer's acceptance of a quotation by Wrights of Twycross, as the case may be.

"Rental Payments"	means the payments made by or on behalf of the Customer for hire of the Equipment under the Contract.
"Risk Period"	means the period during which the Equipment is at the sole of the risk of the Customer as set out in clause 7.2.
"Termination Notice Period"	means the relevant period set out in the Contract Details (if any).
"Total Loss"	means due to the Customer's default the Equipment is, in Wrights of Twycross's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.
"VAT"	means value added tax chargeable in the UK.

1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.2 A reference to **writing** or **written** includes fax and email.
- 1.2.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to hire the Equipment in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted on the date the Contract is entered into by the parties.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Wrights of Twycross, and any descriptions or illustrations contained in Wrights of Twycross's website, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by Wrights of Twycross shall not constitute an offer, and is only valid for a period of as outlined in the quote.

3. EQUIPMENT HIRE

- 3.1 Wrights of Twycross shall hire the Equipment to the Customer subject to the terms and conditions of the Contract.
- 3.2 Wrights of Twycross shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Customer's quiet possession of the Equipment.

4. **RENTAL PERIOD**

The Rental Period starts on the Delivery/Collection Date and shall continue for the period set out in the Contract Details unless the Contract is terminated earlier or extended in accordance with its terms.

5. **RENTAL PAYMENTS AND DEPOSIT**

5.1 The Customer shall pay the Rental Payments to Wrights of Twycross in accordance with the Contract Details. The Rental Payments shall be paid in pound sterling and shall be paid to such bank account as specified by Wrights of Twycross to the Customer in writing from time to time.

5.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.

5.3 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5.4 If the Customer fails to make a payment due to Wrights of Twycross under the Contract by the due date, then, without limiting Wrights of Twycross's remedies under clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

5.5 Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

5.6 The Deposit (if any) is a deposit against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Equipment. The Customer shall, on the date of the Contract, pay the Deposit (if any) to Wrights of Twycross. If the Customer fails without due cause to make any Rental Payments in accordance with the Contract Details or causes any loss or damage to the Equipment (in whole or in part), Wrights of Twycross shall be entitled to apply any Deposit against such default, loss or damage. The Customer shall pay to Wrights of Twycross any sums deducted from the Deposit within ten Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within five Business Days of the end of the Rental Period.

6. **DELIVERY AND / OR COLLECTION**

6.1 **If Delivery of the Equipment is to be made by Wrights of Twycross.** Wrights of Twycross shall use all reasonable endeavours to effect Delivery by the Delivery Date, but such date shall be an estimate only and time shall not be of the essence for delivery of the Equipment. Risk shall transfer in accordance with clause 7.2 of these Conditions.

6.2 **If the Customer is to collect the Equipment.** The Customer shall collect the Equipment from the agreed location on the agreed date. Collection is completed on the completion of loading of the Equipment at the collection Location. Risk shall transfer in accordance with clause 7.2 of these Conditions.

6.3 The Customer shall procure that a duly authorised representative of the Customer shall be present at the Customer's premises for delivery of the Equipment or present on Collection, if collecting the equipment. Acceptance of Delivery/Collection by such representative shall constitute conclusive evidence that the Customer has examined the

Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by Wrights of Twycross, the Customer's duly authorised representative shall sign a receipt confirming such acceptance and comply with any other reasonable requests of Wrights of Twycross including, if requested, allowing Wrights of Twycross to take photographs of the Equipment when delivered or taking such photos of any Equipment collected and providing the same to Wrights of Twycross.

6.4 If the Customer fails to accept delivery of the Equipment on the Delivery Date, or within a Business Day of Wrights of Twycross notifying the Customer that the Equipment is ready for collection then, except where such failure is caused by Wrights of Twycross's failure to comply with its obligations under the Contract:

6.4.1 the Equipment shall be deemed to have been delivered at 9.00 am on the Delivery Date, or, in the case of Equipment that the Customer has failed to collect the Business Day following such date; and

6.4.2 Wrights of Twycross shall store the Equipment until actual delivery or collection takes place, and may, in its absolute discretion, charge the Customer, for all related costs and expenses (including insurance).

7. **TITLE, RISK AND INSURANCE**

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

7.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Equipment is redelivered to Wrights of Twycross. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain such insurance as Wrights of Twycross may from time to time consider reasonably necessary and advise to the Customer, including, but not limited to, as specified in the Contract Details.

7.3 All insurance policies procured by the Customer shall be endorsed to provide Wrights of Twycross with at least twenty Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on Wrights of Twycross's request name Wrights of Twycross on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

7.4 The Customer shall give immediate written notice to Wrights of Twycross in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.

7.5 If the Customer fails to effect or maintain any of the insurances required under the Contract, Wrights of Twycross shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

7.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Wrights of Twycross and proof of premium payment to Wrights of Twycross to confirm the insurance arrangements.

8. CUSTOMER'S RESPONSIBILITIES

- 8.1 The Customer shall during the term of the Contract:
- 8.1.1 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions and shall notify Wrights of Twycross by completing the relevant section of the Contract Details if any familiarisation in respect of the Equipment is required. Wrights of Twycross shall be entitled to assume that the Customer is familiar with and fully understands the operating instructions in respect of the Equipment and is properly trained and competent to operate the same if they do not request any further instructions or familiarisation;
 - 8.1.2 take such steps (including compliance with all safety and usage instructions provided by Wrights of Twycross) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - 8.1.3 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery/Collection Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, arranging any necessary servicing and testing of the Equipment as reasonably requested by Wrights of Twycross from time to time and shall make good any damage to the Equipment;
 - 8.1.4 make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of Wrights of Twycross unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component (or components) is (or are) replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved or advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in Wrights of Twycross immediately on installation;
 - 8.1.5 keep Wrights of Twycross fully informed of all material matters relating to the Equipment;
 - 8.1.6 at all times keep the Equipment in the possession or control of the Customer and keep Wrights of Twycross informed of its location;
 - 8.1.7 permit Wrights of Twycross or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
 - 8.1.8 maintain operating and maintenance records of the Equipment and make copies of such records readily available to Wrights of Twycross, together with such additional information as Wrights of Twycross may reasonably require;
 - 8.1.9 not, without the prior written consent of Wrights of Twycross, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - 8.1.10 not without the prior written consent of Wrights of Twycross, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable

fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify Wrights of Twycross against all losses, costs or expenses incurred as a result of such affixation or removal;

- 8.1.11 not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of Wrights of Twycross in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that Wrights of Twycross may enter such land or building and recover the Equipment both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of Wrights of Twycross of any rights such person may have or acquire in the Equipment and a right for Wrights of Twycross to enter onto such land or building to remove the Equipment;
- 8.1.12 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify Wrights of Twycross and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify Wrights of Twycross on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 8.1.13 not use the Equipment for any unlawful purpose;
- 8.1.14 ensure that at all times the Equipment remains identifiable as being Wrights of Twycross's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- 8.1.15 deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract at such address as Wrights of Twycross requires, or if necessary allow Wrights of Twycross or its representatives access to any premises where the Equipment is located for the purpose of removing the Equipment; and
- 8.1.16 not do or permit to be done anything which could invalidate the insurances referred to in clause 7.
- 8.2 The Customer acknowledges that Wrights of Twycross shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify Wrights of Twycross in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Wrights of Twycross arising out of, or in connection with any failure by the Customer to comply with the terms of the Contract, including for the avoidance of doubt any Total Loss caused to the Equipment as a result of the Customer's failure to comply with reasonable instructions or other negligence or breach of Contract.

9. **WARRANTY**

Wrights of Twycross warrants that the Equipment shall, at the Delivery Date, substantially conform to its specification (as made available by Wrights of Twycross), be of satisfactory quality and fit for any purpose held out by Wrights of Twycross.

10. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULAR DRAW TO THIS CLAUSE**

10.1 References to liability in this clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

10.3 Nothing in this clause 10 shall limit the Customer's payment obligations under the Contract.

10.4 Nothing in the Contract limits any liability which cannot legally be limited including but not limited to liability for:

10.4.1 death or personal injury caused by negligence;

10.4.2 fraud or fraudulent misrepresentation;

10.4.3 breach of the terms implied by section 7 of the Supply of Goods and Services Act;

10.4.4 any matter in respect of which it would be unlawful for the parties to exclude or restrict liability.

10.5 Subject to clause 10.2 (No limitation in respect of deliberate default), and clause 10.4 (Liabilities which cannot legally be limited), Wrights of Twycross's total liability to the Customer shall not exceed the total sums paid by the Customer to Wrights of Twycross under the Contract.

10.6 Subject to clause 10.2 (No limitation in respect of deliberate default), clause 10.3 (No limitation of Customer's payment obligations) and clause 10.4 (Liabilities which cannot legally be limited), Wrights of Twycross shall not be liable under this Agreement for any:

10.6.1 loss of profits;

10.6.2 loss of sales or business;

10.6.3 loss of agreements or contracts;

10.6.4 loss of anticipated savings;

10.6.5 loss of use or corruption of software, data or information;

10.6.6 loss of or damage to goodwill; and

10.6.7 indirect or consequential loss.

10.7 Subject to clause 10.4, all implied terms and conditions as to the quality or performance of the Equipment and any other goods or services provided under the Contract are, to the fullest extent permitted by law, excluded from the Contract.

10.8 This clause 10 shall survive termination of the Contract.

11. **TERMINATION**

- 11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party sufficient notice in writing in accordance with the Termination Notice Period.
- 11.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 11.2.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
 - 11.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 11.2.3 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or
 - 11.2.4 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business
 - 11.2.5 Without affecting any other right or remedy available to it, Wrights of Twycross may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 11.2.6 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than five Business Days after being notified to make such payment; or
 - 11.2.7 there is a change of control of the Customer.
- 11.3 The Contract shall automatically terminate if a Total Loss occurs in relation to the Equipment.

12. **CONSEQUENCES OF TERMINATION**

- 12.1 On termination or expiry of the Contract:
 - 12.1.1 Wrights of Twycross's consent to the Customer's possession of the Equipment shall terminate;
 - 12.1.2 the Customer shall return the Equipment within five Business Days and if the Customer fails to do so, Wrights of Twycross may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located; and
 - 12.1.3 without prejudice to any other rights or remedies of the Customer, the Customer shall pay to Wrights of Twycross on demand:
 - 12.1.3.1 all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.4; and
 - 12.1.3.2 any costs and expenses incurred by Wrights of Twycross in recovering the Equipment or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

- 12.2 If Wrights of Twycross terminates the Contract pursuant to clause 11.2, any other repudiation of the Contract by the Customer which is accepted by Wrights of Twycross or pursuant to clause 11.3, without prejudice to any other rights or remedies of Wrights of Twycross, the Customer shall pay to Wrights of Twycross on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Rental Period, less a discount for accelerated payment at the percentage rate set out in the Contract Details.
- 12.3 The sums payable pursuant to clause 12.2 shall be agreed compensation for Wrights of Twycross's loss incurred on termination and shall be payable in addition to the sums payable pursuant to clause 12.1.3. Such sums may be partly or wholly recovered from any Deposit. Such sums shall be paid in addition to any liability of the Customer to Wrights of Twycross in accordance with clause 8.2 in the event of a Total Loss.
- 12.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 12.5 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
13. **GENERAL**
- 13.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If there is a risk of substantial delay, the party not affected may terminate the Contract by written notice to the affected party.
- 13.2 **Assignment and other dealings.**
- 13.2.1 Wrights of Twycross may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 13.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Wrights of Twycross.
- 13.3 **Entire agreement.**
- 13.4 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.5 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 13.6 Nothing in this clause shall limit or exclude any liability for fraud.

- 13.7 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.8 **Third party rights**
- 13.9 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 13.10 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 13.11 **Notices**
- 13.12 Any notice given to a party under or in connection with the 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 email to the address for each party as set out in the Contract Details.
- 13.13 Any notice shall be deemed to have been received:
- 13.13.1 if delivered by hand, at the time the notice is left at the proper address;
- 13.13.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 13.13.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, where business hours resume. In this clause 13.13.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 13.14 This clause 13 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.
- 13.15 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.16 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this clause 13.16 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.17 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 13.18 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.