

General Terms and Conditions of Hire

1. Definitions and general

Definitions

In these Conditions the following words shall have the following meanings.

“**Business Day**” shall mean a day (other than a Saturday, Sunday or public holiday) when banks in England are open for business;

“**Call-Out Service**” shall mean the inspection and/or repair and/or removal and/or re-installation and/or replacement of the Goods by the Company for the Hirer as described in Clause 11.19-11.22;

“**Commissioning Service**” shall mean the commissioning of the Goods by the Company for the Hirer as described in Clause 11.9-11.13;

“**Company**” shall mean Munters LTD, with company registration number 07270788, whose registered office is at The Knowledge Centre, Wyboston, MK44 3BY;

“**Conditions**” shall mean these General Terms and Conditions of Hire;

“**Contaminants**” shall mean any material (whether airborne or otherwise) which pollutes, infects, corrupts or otherwise comes into contact with the Goods;

“**Contract**” shall mean the contract comprising the Proposal, as accepted by the Hirer, and the Conditions between the Company and the Hirer for the Company to hire the Goods and/or supply Services to the Hirer in accordance with these Conditions;

“**Delivery**” shall mean the transfer of physical possession of the Goods to the Hirer at the Location, or at such other place as stated in the Proposal.

“**Documents**” shall mean any document in writing, any drawing, map, plan, diagram, design, computer program, picture or other image, tape, disk, or other device or record embodying information in any form supplied by the Company to the Hirer;

“**Goods**” shall mean the goods (including any instalment of the goods or any part of them) to be supplied by the Company to the Hirer under the Contract;

“**Hire Fee**” shall mean the fee payable by the Hirer for the hiring of the Goods;

“**Hire Period**” shall mean the time period between the date when the Goods leave the Company depot or place where otherwise dispatched from and the date when the Goods are returned from the Hirer’s Location;

“**Hirer**” shall mean the firm or company identified in the Proposal as the Hirer to whom the Company will hire the Goods and/or supply Services;

“**Installation Service**” shall mean the installation of the Goods by the Company for the Hirer as described in Clause 11.1-11.8;

“**Intellectual Property Rights**” shall mean the patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing-off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“**Location**” shall mean the location at which the Goods shall be kept by the Hirer as specified in the Proposal or otherwise in writing by the Company;

“**Maintenance Service**” shall mean the routine maintenance of the Goods by the Company for the Hirer as described in Clause 11.14-11.18;

“**Price**” shall mean the Hire Fee and/or the price payable for the Services;

“**Proposal**” shall mean the Company’s quotation or other form of written proposal to the Hirer, including any reference to a specification or other document describing and stipulating the Goods and/or Services to be supplied by the Company to the Hirer, and setting out the terms upon which the Goods and/or Services will be supplied; and

“**Services**” shall mean any or all of the Commissioning Service, the Installation Service, the Maintenance Service or the Call-Out Service to be supplied by the Company to the Hirer under the Contract together with any other services performed for the Hirer by the Company.

General

The headings in these Conditions are for convenience only and shall not affect their interpretation. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. Words in the singular include the plural and vice versa.

2. Formation and incorporation

2.1 The Conditions shall be incorporated into and govern the Contract to the entire exclusion of all other terms or conditions. Without prejudice to the generality of the foregoing, the Company will not be bound by any standard or printed terms tendered by the Hirer, unless the Hirer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been agreed in writing by an authorised representative of the Company. In the event of any conflict between the Proposal and these Conditions, the terms of the Proposal shall prevail.

2.2 The Company’s employees or agents are not authorised to make any representations concerning the Goods and/or the Services (including, without limitation, suitability, fitness for purpose, application, use or performance of the Goods) unless expressly agreed in writing and signed by an authorised representative of the Company. In entering into the Contract the Hirer acknowledges that it does not rely on any such representations, which are not so confirmed but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.

2.3 The Contract shall only come into existence on the date the Company actually receives the Hirer’s written acceptance of the Proposal and deemed receipt shall not apply.

2.4 Any variation to the Contract or any documents referred to in the Contract shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.

2.5 The Goods are offered subject to them being available when the Hirer’s acceptance of the Proposal is received by the Company.

3. Price

3.1 The Price set out in the Proposal is in force at the time of date of the Proposal. The Company reserves the right, upon giving the Hirer four (4) weeks’ notice, to make such adjustment to the Price as to reflect variations in the Company’s costs relating to the Goods, materials and labour.

3.2 Only those Goods and/or Services expressly included in the Proposal are included in the Price and all and any other goods or services required by the Hirer shall be supplied at an additional cost to the Hirer.

3.3 Any costs for the Company’s labour quoted in the Price for attendance at the Location shall be based on work over continuous, consecutive Business Days unless stated to the contrary. Additional visits due to factors beyond the Company’s control may incur additional costs for which the Hirer will be liable.

3.4 Activities by the Hirer, which delay, alter or impinge upon the Company’s delivery or collection of the Goods or performance of the Services will make the Hirer liable, upon demand, to pay additional charges to the Company, as reasonably stipulated by the Company.

3.5 The Price is exclusive of amounts in respect of VAT and the Hirer shall, on receipt of a valid VAT invoice, pay to the Company such additional amounts in respect of VAT as are chargeable on the hiring of the Goods and/or the supply of Services.

3.6 The Company has calculated the Price on the basis that the Hirer has disclosed all Contaminants and other relevant working environment conditions, which the Goods will be exposed to at its operating location. In the absence of any such disclosure, the Price has been calculated on the basis that the Goods will operate in an environment consistent with the working environment stipulated in the user manual.

4. Payment terms

4.1 Provided that the Company has conducted a satisfactory credit check of the Hirer, the Hire Fee shall be paid as specified in the Proposal. If requested by the Company, instalment of the Hire Fee shall be payable by the Hirer by standing order. Payment terms for the price payable for the Services are stated in the Proposal. All invoices submitted by the Company to the Hirer are payable within 30 days from the invoice date.

4.2 In the absence of a satisfactory credit check as set out in Clause 4.1, the Hirer will be invoiced by the Company in advance and such invoices must be paid in full before Delivery of the Goods or performance of the Services.

4.3 Notwithstanding the foregoing, if the Hire Period is equal to or shorter than one month, the Hire Fee shall, unless otherwise stated in the Proposal, be paid in arrears upon the expiration of the Hire Period.

4.4 The Hirer shall pay all amounts due under the Contract in full without any deduction or withholding and the Hirer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may at any time, without limiting any other rights or remedies it might have, set-off any amount owing to it by the Hirer against any amount payable by the Company to the Hirer.

4.5 Non-payment of any part of the Price upon the date it falls due shall result in all monies due from the Hirer to the Company becoming immediately payable and the Company shall be entitled to suspend performance of all or any of its obligations to the Hirer howsoever arising until such payment.

4.6 If the Hire Fee shall be paid in instalments pursuant to Clause 4.1, and the Hirer defaults in any payment due, the remainder of the Hire Fee shall become due immediately.

4.7 Under the Late Payment of Commercial Debts (Interest) Act 1998, the Company reserves the right to charge for accrued interest on all outstanding invoices from the date upon which payment falls due at the rate of 8% plus the Bank of England base rate for all business to business transactions.

4.8 In the event of legal action being taken by the Company against the Hirer for breach of any obligation of the Hirer under the Contract (including, without limitation any payment obligations), the Hirer shall be responsible for all costs and disbursements, reasonably and necessarily incurred by the Company, on an indemnity basis.

5. Termination of the Contract of the Hirer

5.1 The Hirer may, provided that the Hire Period exceeds 26 weeks, terminate the Contract by giving thirty (30) days prior written notice to the Company at any time. On such termination and without prejudice to any other rights or remedies that the Company might have, the Hirer shall immediately pay to the Company:

- (i) any arrears of the Hire Fee;
- (ii) the Price for any Services already performed by the Company; and
- (iii) all the remainder of the Hire Fee payable until the end of the notice period set out above (and, if applicable, less a discount for accelerated payment at the rate set out in the Proposal).

5.2 If the Hirer terminates the Contract after the acceptance of the Proposal, but less than two (2) weeks prior to scheduled Delivery, the Hirer shall as sole remedy immediately pay to the Company an amount of the Hire Fee corresponding to thirty (30) days Hire Period, or, if the Hire Period is below thirty (30) days, the full Hire Fee.

6. Delivery

6.1 Upon Delivery of Goods, the Hirer shall be responsible for unloading the Goods delivered by the Company at the Location.

6.2 Upon Delivery, the Hirer shall carry out a reasonable visual inspection of the Goods and shall notify the Company in writing of any apparent damage or defects within three (3) working days. Without such written notice, all Goods will be deemed to have been timeously delivered, installed in good working condition, free from any apparent damage or defects and to the Hirer's satisfaction.

6.3 Waiting time for unloading will be limited to two (2) hours, after which additional costs may apply for which the Hirer will be liable.

6.4 The Company shall accept liability for damage, loss or injury to the Goods arising:

- (i) prior to delivery of the Goods to the Location where the Goods are in transit by transport arranged or owned by the Company;
- (ii) during installation of the Goods on the Location where such installation is entirely within the Company's control;
- (iii) during dismantling of the Goods where such dismantling is entirely within the Company's control;
- (iv) after removal of the Goods from the Location where the Goods are in transit by transport arranged or owned by the Company.

6.5 Except as expressly stated above, the Goods will remain the sole risk of the Hirer during the Hire Period and any further time when the Goods are in the possession, control or custody of the Hirer.

7. Intellectual Property Rights

7.1 All Intellectual Property Rights in the Goods and comprised in or arising out of the Services (including, without limitation, all Intellectual

Property Rights in the Documents) belong to and are the absolute property of the Company.

7.2 The Contract does not grant the Hirer any right to use the Company's Intellectual Property Rights in the Goods or comprised in or arising out of the Services (including, without limitation, all Intellectual Property Rights in the Documents) save for the physical possession and use of the Goods for their intended purpose as specified in the Contract.

7.3 The Hirer undertakes not to infringe, and to procure that none of its employees or contractors shall infringe, the Company's Intellectual Property Rights.

7.4 The Hirer undertakes not to copy, or to procure anyone to copy, or to make any changes or adjustments to the appearance or construction of the Goods without the Company's prior written consent.

7.5 If the Hirer infringes the Company's Intellectual Property Rights, or alters the Goods in any way so as to infringe a third party's Intellectual Property Rights, the Hirer shall indemnify the Company for any losses incurred as a result of such infringement.

8. Confidentiality

8.1 The parties may not disclose to any third party any commercial, financial and technical information, know-how and experience received from or on behalf of and pertaining to the other party and shall not use such information other than for the agreed purpose during the term of the Contract as well as for a period of five (5) years thereafter.

8.2 This Clause 8 shall not be applicable to information which (i) is independently known or developed by the recipient of such information; (ii) is or becomes public knowledge otherwise than by unauthorized disclosure in breach of the Contract or these Conditions, (iii) is obtained from a third party who did not obtain it by unauthorized disclosure from either party.

8.3 Notwithstanding the foregoing, information which a party is required to disclose by reason of law, applicable stock exchange regulations or order of a court of a competent jurisdiction shall be disclosed for such purposes. The party requested to disclose such information shall beforehand notify the other party of any such requirement and consult with the other party regarding the manner of such disclosure. The party disclosing information pursuant to this Clause 8.3 shall, as far as is legally possible, require the receiver of the information to treat it confidential as required in this Clause 8.

9. Hirer Obligations regarding the Goods

9.1 The Hirer shall:

- (i) be responsible for the safekeeping and for using the Goods in conformity with its specification and operating instructions issued by the Company, and in accordance with any relevant legislation;
- (ii) ensure that the Goods are not operated or used after the Goods have become defective, damaged or in a dangerous state or in a state which results in a breach of any applicable law or regulation. If the Hirer or any employee, servant or agent of the Hirer does operate the Goods in such abovementioned condition, the Hirer (i) shall be solely responsible for any damage, loss or accidents resulting therefrom and (ii) shall, without prejudice, indemnify the Company in respect of any loss or damage suffered by the Company and against any claims made against the Company resulting therefrom;
- (iii) keep the Goods clearly marked as being the property of the Company;
- (iv) should breakdown or damage occur to any of the Goods owing to (i) failure by the Hirer to observe any terms of the Contract, (ii) negligence or misuse by the Hirer or its employees, servants or agents, (iii) wilful or accidental damage however occurring or (iv) damage caused by Contaminants, the Hirer shall be liable to the Company for:
 - (A) full cost of any repairs which the Company shall deem necessary or desirable; or
 - (B) if the Company reasonably considers that such repairs would not be practicable or cost effective, the whole cost of replacement of such Goods;
 - (C) Hire Fee of the Goods (i) while the Goods is idle owing to any such breakdowns or damage and (ii) while repairs are being carried out (but without prejudice to the Company's right to receive Hire Fee in respect of the Contract);
 - (D) transport costs for the purpose of repair owing to damage or breakdown to such address in the United Kingdom as the Company has notified to the Hirer, or if so notified in writing by the Company allow the Company to collect the Goods from the Location; and
 - (E) transport costs for replacement of the damaged or broken-down Goods to the Location.
- (v) not modify the Goods in any way whatsoever or remove, deface or cover up any serial number or any marking displayed on the Goods by the

Company (including any marking to indicate that the Goods are the property of the Company);

- (vi) not sell, assign, mortgage, charge, pledge, create a lien over, lend, hire, part with possession of or otherwise dispose of the Goods, or offer or attempt or purport to do any of those acts or things in relation to the Goods;
- (vii) where required, maintain accurate and complete records about the Goods, their use and operation, and, if performed by any other party than the Company in accordance with Clause 10.2, also about maintenance, servicing, repair and replacement. The Hirer shall allow the Company to inspect and take copies of those records at any time and give to the Company at the end of the Hire Period the originals of the records maintained under this Clause;
- (viii) allow the Company access at any time on a Business Day to inspect the Goods;
- (ix) be responsible for return of all the Goods to the Company at the end of the Hire Period (or upon the earlier termination of the Contract) in a condition that complies with the full performance of the Hirer's obligations under the Contract and at such address in the United Kingdom as the Company has then notified to the Hirer, or if so notified in writing by the Company allow the Company to collect the Goods from the Location. If the Hirer returns any of the Goods other than in such condition for any reason whatsoever (whether or not involving any negligence or other fault on the part of the Hirer or its employees, servants or agents), then the Hirer shall be liable for:
 - (A) the full cost of any repairs which the Company shall reasonably deem necessary or desirable; or
 - (B) if the Company reasonably considers that such repairs would not be practicable or cost effective, the whole cost of replacement of such Goods; and
 - (C) Hire Fee of the Goods (i) while the Goods is idle owing to any such breakdowns or damage and (ii) while repairs are being carried out (but without prejudice to the Company's right to receive Hire Fee in respect of the Contract).

9.2 As regards insurance, the Hirer shall:

- (i) keep the Goods insured for their full replacement value against all and any risks on a comprehensive policy without restriction or excess by a policy that provides the Company with at least twenty (20) Business Days written notice before cancellation or material change (including any reduction in coverage or policy amount) and with substantial and reputable insurers in the United Kingdom and in that connection give notice to the insurance company of the Company's interest as owner of the Goods and as beneficiary of the insurance;
- (ii) keep the Company and the Hirer insured as joint insured against all liability to other persons for death, personal injury and damage to or loss of property arising directly or indirectly out of the use, possession or operation of the Goods;
- (iii) produce the insurance policy (with proof that the premiums have been paid) to the Company upon request; and
- (iv) if the Hirer does not comply with the obligations in this Clause 9.2, then the Company may (at its sole discretion) effect the insurance and the Hirer shall reimburse the Company on demand for the cost thereof.

9.3 If there is a total loss of the Goods (whether actual, constructive or arranged) then within twenty (20) Business Days after the event that gave rise to the total loss, the Hirer shall pay to the Company:

- (i) any arrears of the Hire Fee;
- (ii) all the remainder of the Hire Fee;
- (iii) any damages for any breach of the Contract; and
- (iv) the proper costs and expenses (including legal fees) incurred by the Company in or towards enforcing its rights under the Contract.

In addition, the Company shall be entitled to terminate the Contract with immediate effect.

9.4 If there is loss or damage to the Goods that is not a total loss of the Goods, the Hirer shall:

- (i) immediately notify the Company in writing;
- (ii) apply the insurance amounts in making good the loss and damage; and
- (iii) upon written request by the Company absolutely assign to the Company all the benefit of the Hirer under the insurance policy;
- (iv) indemnify the Company against all loss or damage to the Goods that occurs before the Company has retaken physical possession of the Goods, to the extent that the Company is not indemnified by the insurance amounts.

10. Hirer Obligations regarding the Services

10.1 In order to enable the Company to perform the Services, the Hirer shall provide the Company with all information and documentation reasonably necessary and with all necessary access to the premises where

the Services are to be performed, including suitable safe work spaces, site services and facilities including, without limitation, electricity and water supplies.

10.2 The Hirer is not allowed to, either by itself or through a third party, perform any Services without the Company's prior written approval. If such approval is granted, the costs for such Services conducted by the Hirer or a third party shall be borne by the Hirer and shall not affect the Hire Fee.

10.3 The Hirer shall rectify any problems before the Company's staff start performing the Services on site and the Company shall be entitled to charge the Hirer an additional sum if the attending Company staff, and those working for on behalf of the Company, are unable to commence the Service on site at the agreed time because of a safety or environmental risk unacceptable to the Company.

11. Services

The Services comprise the following.

The Installation Service

11.1 The scope of the Installation Service will be specified in the Contract together with the Price and any other specific terms. Unless otherwise set out in the Proposal, the fee for the Installation Service is included in the Hire Fee.

11.2 The date for the Company to perform the Installation Service will be stipulated in the Contract and if such date is to be determined by a notice to be issued by the Hirer to the Company, such notice shall be in writing and of no less than twenty-one (21) days.

11.3 The Installation Service will include as standard a site induction safety meeting of one hour between the Company's commissioning engineer and the nominated representatives of the Hirer. If the meeting requires additional time, the Company shall be entitled to charge an additional fee.

11.4 The Installation Service does not include the undertaking of any building work or the installation of additional equipment including, without limitation, cutting away and making good, painting, electrical work, pipe work and fittings, lagging and insulation, scaffolding, heavy lifts and plant positioning or re-positioning, other civil works, sound level testing, determination of maximum allowed floor loading, diamond drilling and planning permission or any underground or building surveys or the like;

11.5 The Hirer will provide secure storage and lay down areas for the Company's equipment and tools used to provide the Installation Service. For the avoidance of inconvenience, any period agreed for Installation Service shall not commence until the Hirer has completed unloading and located the Goods in its required position.

11.6 The Company shall have the right to suspend or terminate the Installation Service if any Contaminants (including without limitation asbestos) or other hazardous material is detected at the location where the Installation Services are being performed and, in the reasonable opinion of the Company, would affect the safe continuation of the Installation Services. The Company will not be responsible for any costs of rendering the area safe for the continuation of the Installation Service;

11.7 If the Hirer requires any amendment to the programme for work for the Installation Service contained in the Proposal, the Company will use its reasonable endeavours to amend the programme and resubmit to the Hirer for further review. The Company shall be entitled to charge a further fee in addition to the Price stipulated in the Contract if any amendment to the programme of work involves the Company in additional time or expense in completing the Installation Service and the Company shall be entitled to decline to perform any amendment to the programme of work if such further fee cannot be agreed with the Hirer; and

11.8 The Company will not be responsible for any delays or additional cost caused by any work (whether of an installation nature or otherwise) carried out to the premises or the Goods by or on behalf of the Hirer prior to the Company's commencement of the Installation Service where such prior works have not previously been approved by the Company or carried out in accordance with any Documents supplied with the Goods.

The Commissioning Service

11.9 The scope of the Commissioning Service will be specified in the Contract together with the Price and any other specific terms. Unless otherwise set out in the Proposal, the fee for the Commissioning Service is included in the Hire Fee. The date for the Company to perform the Commissioning Service will be stipulated in the Contract and if such date is determined by a notice to be issued by the Hirer to the Company, such notice shall be in writing and of no less than twenty-one (21) days. For the avoidance of inconvenience, any period agreed for the Commissioning Service shall not commence until the Hirer has completed unloading and located the Goods in its required position.

11.10 The Commissioning Service will include as standard a site induction and safety meeting of one hour between the Company's commissioning

engineer and the nominated representatives of the Hirer. If the meeting requires additional time, the Company shall be entitled to charge an additional fee.

11.11 The Commissioning Service does not include the undertaking of any building work or the installation of additional equipment including, without limitation, cutting away and making good, painting, electrical work, pipe work and fittings, lagging and insulation, scaffolding, heavy lifts and plant positioning or re-positioning or the like.

11.12 If a Commissioning Service visit is cancelled by the Hirer or the Company cannot gain appropriate access in order to carry out the Commissioning Service, a cancellation fee consisting of a percentage of the total Price for the Commissioning Service visit will be charged by the Company to the Hirer as detailed below:

- (i) 0 - 24 hours' notice 100% of the day rate will be chargeable;
- (ii) 24 - 48 hours' notice 75% of the day rate will be chargeable;
- (iii) 48 - 72 hours' notice 50% of the day rate will be chargeable;
- (iv) 72 hours and above 0% charge will apply; and
- (v) a further fee for materials specific to the Commissioning Service may also be charged by the Company at its then standard rates including for restocking and delivery of the materials.

The Maintenance Service

11.13 The scope and period of the Maintenance Service will be specified in the Contract.

11.14 The Company shall, either itself or via a contractor, provide Maintenance Service in accordance with the Company's standard practice. The Hirer shall make the Goods available to the Company for the purpose of carrying out such Maintenance Service upon one (1) weeks' notice by the Company.

11.15 During normal working hours, the Company will perform Maintenance Service without any charge to the Hirer, but if the Hirer can only make the Goods available for Maintenance Service purpose outside normal working hours then the Company reserves the right to charge the Hirer for overtime costs.

11.16 The Maintenance Service consists of pre-booked service visits and does not include emergency or breakdown cover.

11.17 If a Maintenance Service visit is cancelled by the Hirer or the Company cannot gain appropriate access in order to carry out the Maintenance Service, a cancellation fee consisting of a percentage of the total Price for the Maintenance Service visit will be charged by the Company to the Hirer as detailed below:

- (i) 0 - 24 hours' notice 100% of the day rate will be chargeable;
- (ii) 24 - 48 hours' notice 75% of the day rate will be chargeable;
- (iii) 48 - 72 hours' notice 50% of the day rate will be chargeable;
- (iv) 72 hours and above 0% charge will apply; and
- (v) a further fee for materials specific to the Maintenance Service may also be charged by the Company at its then standard rates including for restocking and delivery of the materials.

The Call-Out Service

11.18 Upon Call-Out Service rendered due to breakdowns or defects in any Goods resulting from proper ordinary usage or fair wear and tear or the development of an inherent defect or a defect not ascertainable by reasonable examination by the Hirer in accordance with Clause 6.2, the Company will (i) repair at its expense and with the least reasonably practicable delay, in which case the Hirer shall not be charged from its notification of a breakdown to the Company until repair is completed, or alternatively (ii) replace the relevant Goods where applicable.

11.19 Any other Call-Out Service rendered due to breakdowns or defects due to reasons other than stated in Clause 11.19 will be either, (i) attended for any repairs at the Hirer's expense and without prejudice to the obligation of the Hirer to pay any sums due to the Company under the Contract until repair is completed, or (ii) replace the relevant Goods where applicable.

11.20 Any breakdowns or the unsatisfactory working of any part of the Goods must be notified immediately to the Company.

11.21 If a Call-Out Service visit is cancelled by the Hirer or the Company cannot gain appropriate access in order to carry out the Call-Out Service, a cancellation fee consisting of a percentage of the total Price for the Call-Out Service visit will be charged by the Company to the Hirer as detailed below:

- (i) 0 - 24 hours' notice 100% of the day rate will be chargeable;
- (ii) 24 - 48 hours' notice 75% of the day rate will be chargeable;
- (iii) 48 - 72 hours' notice 50% of the day rate will be chargeable;
- (iv) 72 hours and above 0% charge will apply; and
- (v) a further fee for materials specific to the Call-Out Service may also be charged by the Company at its then standard rates including for restocking and delivery of the materials.

12. Ownership of the Goods and Option to Purchase

12.1 The Hirer acknowledges that subject to Clause 12.2,

- (i) the Company will at all times retain the ownership of the Goods;
- (ii) the Hirer will have no right of ownership in the Goods; and
- (iii) whether or not the Goods have been affixed to any land, the Company will continue to be the owner of the Goods and the Goods will remain the personal chattels of the Company.

12.2 If an option to purchase all or some of the Goods is specified in the Proposal, the Company agrees that if the Hirer has complied with the Hirer's obligations under the Contract then the Hirer will have the option to purchase those Goods for the Price and on the other terms and conditions stated in the Proposal at the end of the Hire Period.

12.3 The Hirer shall exercise its option to purchase by giving the Company written notice at least twenty (20) Business Days before the end of the Hire Period. Any such sale to the Hirer shall also be governed by the Company's standard terms and conditions of sale, except that such Goods will be sold "as is" in its then current state.

13. Warranties

13.1 The Company warrants that the Goods substantially conform to the specification of it given by the Company and are of satisfactory quality.

13.2 The Company warrants that it shall perform the Services using reasonable skill and care. The Company's engineers performing any of the Services at the Hirer's premises will be suitably skilled and experienced. If there is a requirement for a specific accreditation to perform the Service (including, without limitation, safety accreditation), the Company will be entitled to charge the Hirer an additional fee.

13.3 The Company shall be under no liability (whether under the warranties contained within these Conditions or otherwise) in respect of any defect in the Goods and/or Services:

- (i) arising from any drawing, design, specification, data or other information supplied to the Company by the Hirer or the failure to supply the Company with all information and documentation reasonably necessary for the Company to perform the Service;
- (ii) caused by a Contaminant, other than those notified to the Company by the Hirer in writing prior to the Company issuing the Proposal;
- (iii) arising from the installation of the Goods if the Company has not performed the Installation Service;
- (iv) arising from the Hirer's failure to commission, maintain or service the Goods in accordance with the Company's instructions (whether oral or in writing) and to have such maintenance or servicing carried out by an engineer of the Company or a competent engineer approved by the Company and who has access to all the necessary calibrated test equipment;
- (v) arising from the Hirer's failure to operate the Goods in accordance with the Company's instructions (whether oral or in writing) (including, without limitation, any instructions on the environment in which the Goods are installed and operated) and in accordance with the user manual for the Goods;
- (vi) arising from wilful damage, negligence, abnormal working conditions, misuse or alteration of the Goods without the Company's written approval; or
- (vii) unless the Company is given written notice of the alleged defect by the Hirer and a reasonable opportunity, after receiving the notice, to examine the Goods.

13.4 In respect of Goods supplied to the Hirer under the Contract, the obligation of the Company under the warranties contained within these Conditions is limited to (a) the repair or, at the sole option of the Company, the replacement of the defective Goods, and (b) allowing an appropriate reduction in the Hire Fee for each Business Day on which the Goods are not fully available to the Hirer because of any breach of these warranties.

13.5 The Hirer warrants that it will comply with the provisions of all relevant statutes, regulations and by-laws for the Hirer's use of the Goods and has obtained any necessary licence or consent that may be required in connection with the supply and use of the Goods.

14. Liability

14.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

14.2 Nothing in these Conditions limits or excludes the Company's liability for:

- (i) death or personal injury caused by the Company's negligence; or
- (ii) any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (iii) fraud or fraudulent misrepresentation.

14.3 Subject to Clause 14.1 and 14.2, the Company's total liability in contract, tort (including negligence or breach of statutory duty),

misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to a sum equivalent to the Price paid to the Company for the Goods and/or Services that are the subject of the Hirer's claim; and the Company shall not be liable to the Hirer for any pure economic loss, loss of profit, loss of business, depletion of goodwill, loss of revenue, downtime costs, costs of providing alternative equipment, additional labour costs, loss of contracts or loss of anticipated savings or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential or indirect compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14.4 The Hirer shall indemnify the Company against:

(i) all losses, actions, claims, demands, proceedings (whether criminal or civil), costs, legal expenses (on a full indemnity basis), insurance premiums and calls, liabilities, judgements, damages or other sanctions whenever arising, directly or indirectly from the Hirer's failure or alleged failure to perform its obligations under the Contract;

(ii) any loss, injury or damage suffered by any person (including without limitation the Company) because of the presence of the Goods while in the possession of the Hirer; and

(iii) all loss or damage howsoever caused to all Goods delivered to, or materials (including tools) at, the site of the Hirer, which remain, or are, the property of the Company.

15. Other

15.1 Any failure or delay by the Company to exercise any right or remedy available to it under the terms of the Contract or otherwise shall not operate as a waiver of such right and single or partial exercise by the Company of such a right does not preclude the exercise by the Company or any other right or remedy.

15.2 The Company may assign the Contract or any part thereof to any person, firm or company. The Hirer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

15.3 The Company may sub-contract its obligations under the Contract or any part of it to any person, firm or company.

15.4 Any provision of the Contract, which is or may be void or unenforceable shall to the extent of such invalidity be deemed severable and shall not affect any other provision of the Contract and such void or unenforceable provision shall be replaced by a legal and enforceable provision, which as close as possible achieves the Parties' initial intent.

15.5 Subject to any assignment made pursuant to Clause 15.2, any person or entity who is not a party to the Contract will have no right to rely upon or enforce any term of the Contract.

16. Force Majeure

16.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Hirer or the Services to be performed for the Hirer (without liability to the Hirer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to its workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

17. Term and Termination

17.1 The Contract will enter into force upon the Hirer's acceptance of the Proposal pursuant to Clause 2.3 and will automatically expire upon the expiration of the Hire Period, when the Goods shall be returned to the Company. Any extension of the Hire Period hereafter is subject to the conclusion of a new Contract.

17.2 If the Hirer is in material breach of the Contract and, in case of a breach capable of remedy, fails to correct the breach within five (5) Business Days (or such longer period as may be stipulated by the Company) or if the Hirer becomes insolvent or bankrupt or makes any arrangement with its creditors or suffers a receiver or administrator to be appointed over its assets, the Company may, upon giving written notice to the Hirer, terminate the Contract with immediate effect.

17.3 Upon such termination, the Company shall have no further obligations under the Contract and, without prejudice to any other remedy available to the Company, any unpaid part of the Hire Fee and the Price for any Services already performed shall become immediately due and payable by the Hirer. The Company's consent to the Hirer's possession of the Goods will terminate immediately and the Company will have the right to take possession of the Goods wherever they may be, and may for this purpose enter the Location or any premises at which the Goods are located.

18. Notices

18.1 Any notice to be given pursuant to the terms of the Contract shall be in writing and may be sent by first class post or facsimile transmission provided a facsimile transmission is confirmed within twenty-four (24) hours by confirmatory copy sent by first class post or airmail (as appropriate). Correctly addressed notices sent by first class post shall be deemed delivered forty-eight (48) hours after posting; sent by airmail six (6) days after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided they are confirmed as set out above. Notices shall not be validly served if sent by email.

19. Governing Law and Jurisdiction

19.1 The Contract shall be governed and construed in all respects in accordance with the substantive laws of the jurisdiction of England and Wales, without regard to its principles of conflicts of laws.

19.2 Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC"). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English. The governing law of the Contract shall be the substantive law of England and Wales.

19.3 Notwithstanding the foregoing, the Company shall always be entitled to apply to the relevant authority for an injunction to pay and to take legal proceedings against the Hirer in the courts of general jurisdiction and other relevant authorities in the case of due and undisputed invoices or if the following described controversies, disputes or claims arise: (i) infringement by the Hirer of any trademark or patent or other Intellectual Property to which the Company has title or license, (ii) the Hirer's improper usage or refusal to return or deliver over any of the Goods belonging to the Company, or (iii) any other act or omission on the part of the Hirer that would, in the sole discretion of the Company, cause the Company irreparable harm. Further, nothing contained herein shall derogate or abrogate from either Party's right and capacity to seek injunctive relief or a mandatory order in any court of competent jurisdiction.