



## **Total UK Rentals Ltd – Terms and Conditions**

### **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;

Confirmation: any document supplied by the Supplier to the Customer setting out the particulars of the Customer’s order (but not a mere acknowledgement of receipt of an order pursuant to clause 18.3 below).

“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;

“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 Total UK Rentals Limited a company registered in England and Wales with company number 13640140 (VAT number GB 394 2916 64). Registered office: Peine House, Hindhill Street, Heywood, OL10 1JZ, 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.

1.2 These terms and conditions shall not be amended without the prior written agreement of a director of the Supplier.

1.3 The Supplier will not be bound by any change purported to be made to these terms and conditions by any of the Supplier’s staff unless a director of the Supplier confirms in writing that the change is agreed (this paragraph does not apply to Consumers).

1.4 Furthermore if there is any inconsistency between these terms and conditions on the one hand and any other documentation or information provided to the Customer, then to the extent of any conflict (except for details of price, payment, Hire Period or delivery in any Confirmation), these terms and conditions will prevail (this paragraph does not apply to Consumers, or in respect of the sale of second hand/ex-hire goods in respect of which the Confirmation will take precedence).

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## 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 reasonable 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. Irrespective of the foregoing provisions, if the Hire Period is extended to a period of time which exceeds three months, the Supplier will automatically terminate the Contract at the end of three months and reissue a new Contract on the same terms to the Customer for the extended period. No Hire Period shall ever exceed a three-month period.

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 affect 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.

## 3. **FAULTY GOODS AND/OR SERVICES**

3.1 Where the Customer deals as a Consumer, the Supplier is under a legal duty to supply Goods and Services that are in conformity with the contract between the parties. In such circumstances, the Customer has legal rights in relation to Goods 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.

## 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 or in the Confirmation (in the event of any conflict the price in the Confirmation shall apply). 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 in accordance with the Supplier's standard payment terms - which require payment to be received by the Supplier End of Month following month of invoice (any variation to these terms are to be agreed in writing by the Supplier's Director and/or Credit Manager or in the Confirmation). If no monthly credit terms have been agreed by the Supplier, then the Supplier's invoices are due for payment when an order for the Goods and/or Services is placed or, if agreed in advance by the Supplier, when the Goods and/or Services are delivered or supplied. The Supplier's prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable. However, if the rate of VAT changes between the date of the order and the date of delivery, the Supplier will, if permitted by law, adjust the VAT the Customer pays, unless the Customer has already paid for the Goods in full before the change in

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- 3.
4. VAT takes effect.
  - 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:
    - 4.4.1 the Supplier may charge the Customer interest (both before and after judgment/decreed) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 ("1998 Act") (where applicable) or at the rate of 4% above the base rate from time to time of the Supplier's bank whichever is higher;
    - 4.4.2 All sums payable under the Contract, and under any other contract between the Supplier and the Customer, shall immediately become due and payable;
    - 4.4.3 Regardless of whether or not the Supplier is claiming interest under the 1998 Act the Supplier shall be entitled to recover all sums which it would have been entitled to recover under the 1998 Act if it had charged interest under the 1998 Act. Such sums shall include the compensation charges referred to in clause 5A of the 1998 Act, (the amount of compensation being determined in accordance with the principles set out in the 1998 Act).
  - 4.5 (\*) The Customer shall be deemed to have accepted the Rental due as set out on an invoice unless it informs the Supplier within 14 days of the date of the invoice that it disputes the invoice.
  - 4.6 (\*) 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.
  - 4.7 If the Customer is a Consumer, the Supplier may charge interest on any sums not paid by the due date for payment at a rate of 2.5% above the base rate of the Bank of England (both before and after judgment/decreed).
  - 4.8 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 if the credit limit is already exceeded. The Supplier may, in its absolute discretion, reduce the Customer's credit limit.
  - 4.9 Where Goods are supplied in excess of this credit limit (for any reason) at the request of the Customer, the Customer's employees, staff, servants or agents, any other person, purporting to act on behalf of the Customer, or any person authorised by the Customer to make use of the account, then the Customer will be held responsible for the entire account, including the excess. In such circumstances, the Customer shall reduce the Customer's balance to within the credit limit by the end of the calendar month during which the credit limit was exceeded, and if it fails to do so within 7 days of notice to do so, the Supplier reserves the right to terminate or suspend the Contract for hire of the Hire Goods and/or provision of the Services.
  - 4.10 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. The Supplier may, where permitted to do so, use such details to recover costs, damages or losses to which the Supplier is otherwise entitled pursuant to these conditions.
  - 4.11 Customer owned equipment in the Supplier's possession shall be held securely for the duration of any necessary quotation, service and repair work. After the required work has been completed, the Supplier will make reasonable efforts to contact the Customer for a three-month period. Should this period lapse without confirmed contact and the instruction from the Customer, the Supplier reserves the right to:
    - 4.11.1 dispose of Customer owned equipment at its discretion; and/or
    - 4.11.2 sell Customer owned equipment at its discretion and retain the proceeds of sale after applying the monies in accordance with clause 4.12.
  - 4.12 In respect of clauses 4.11.1 and 4.11.2 above the Supplier shall apply any monies arising as a result of disposal, sale or hire against any debt outstanding from the Customer to the Supplier.
  - 4.13 If the initial hire is paid by credit card and the hire is extended, then the Supplier reserves the

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right to charge the credit card with any unpaid charges arising from the additional hire. The Supplier shall inform the Customer where such charges are made.

## **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, the Hire Period has ceased, or if the Contract has expired or terminated.

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 (in cash or cleared funds).

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 store such Sale Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

5.4.3 not remove, deface or obscure any identifying mark or packaging on or relating to such Sale Goods;

5.4.4 maintain the Sale Goods in satisfactory condition; and

5.4.5 keep them insured (as from the time they leave the physical possession or control of the Supplier) on the Supplier's behalf for their full price against all risks with an insurer that is acceptable to the Supplier (acting reasonably). The Customer shall (if requested by the Supplier) obtain an endorsement of the Supplier's interest in the Sale Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect the Sale Goods and the insurance policy, but the Customer may resell or use the Sale Goods in the ordinary course of its business.

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 ensure 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 from time to time, within 30 days of acceptance of the Customer's order (unless otherwise agreed), and such delivery and/or collection will form part of the Services. Should the Services include delivery of Goods by the Supplier, the Supplier will be liable for the risk in the Goods during transportation.

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

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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.

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, aborted and/or are cancelled due to the Customer failing to comply with its obligations herein the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement, aborted delivery 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 and in the same condition that they were in prior to the hire (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.

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## **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, in accordance with the provisions of clause 8.3, and to pay the Rental, 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.

## **5. 10. STATUTORY CANCELLATION RIGHT FOR CONSUMERS**

10.1 The provisions of this clause 10 only apply to online or telephone sales/hires to Customers who are Consumers 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 by writing to the Supplier at the address stated at the end of these terms, 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 10.2 and has made payments in

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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 10.2, 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.

10.7 A Consumer can cancel the Contract within the 14 day period referred to above by a clear statement to that effect to the Supplier, which may be sent by post or by email (to the addresses below) or by printing off the cancellation form attached to these Terms and Conditions and posting it to the Supplier at the address on the form.

10.8 Returns can be made to any of the Supplier's branches.

10.9 The Customer will be responsible for the cost of returning the item to the Supplier, and if it fails to do so, and the Supplier has to collect it from the Customer, the Supplier will deduct the direct costs of doing so from the Customer's refund.

10.10 The Supplier will endeavour to refund any money received from the Customer using the same method originally used by the Customer to pay for the purchase.

10.11 The Supplier may reduce any refund (excluding delivery costs) to reflect any reduction in the value of the Goods, if this has been caused by the Customer's handling them in a way which would not be permitted in a shop. If the refund is paid before the Supplier is able to inspect the Goods and it becomes apparent that the Customer has handled them in an unacceptable way, the Customer must pay the Supplier an appropriate amount.

10.12 The maximum refund for delivery costs will be the costs of delivery by the least expensive delivery method the Supplier offers.

10.13 Where the product is Services, the Supplier may deduct from any refund an amount for the supply of the Service for the period for which they were supplied, ending with the time when the Customer informs the Supplier it has changed its mind. The amount will be in proportion to what has been supplied, in comparison with the full coverage of the Contract.

## **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.

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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;

12.1.8 appears to the Supplier (acting reasonably) to be about to suffer any of the above events; and/or

12.1.9 fails to return to the Supplier the Hire Goods by the due date for return, 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 12.2 below.

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 (\*) The Customer warrants that the Supplier shall have all rights, licences and permissions required to enter the Customer's premises, and the premises of third parties, for the recovery of Sale Goods. The Customer hereby grants the Supplier a licence to enter the premises of the Customer (or any third party premises where Sale Goods are held) to enable the Supplier to recover the Sale Goods in accordance with clause 12.2.1.

12.4 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.

12.5 (\*) The Supplier may recover the costs, including but not limited to the costs of replacement, in respect of lost or damaged Goods, and nothing in clauses 12.2-12.4 shall limit the Supplier's right to recover such costs. The Supplier may recover the costs, including but not limited to the costs of replacement and recovery, in respect of Goods which the Supplier has been unable to collect because

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they have not been made available for collection by the Customer in breach of this agreement, and nothing in clauses 12.2-12.4 shall limit the Supplier's right to recover such costs.

12.6 Upon termination of the Contract the Customer shall immediately:-

12.6.1 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 (and the provisions of clauses 12.2 to 12.5 in respect of access to premises for this purposes shall apply); and

12.6.2 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 Subject to clause 13.2 the Supplier warrants that:

13.1.1 it will carry out any Services under the Contract with reasonable skill and care; and

13.1.2 the Goods will conform in all material respects with their description, be of satisfactory quality, and be reasonably fit for the purposes for which products of that kind are commonly supplied.

13.2 The warranty in clause 13...1 shall apply for six months from when the Goods were hired or sold (as the case may be), or if shorter, and in respect of Hired Goods, the duration of the hire. For the avoidance of doubt, the warranty in clause 13.1 does not apply to the sale of second hand/ex-hire goods.

13.3 (\*) The Supplier will not be liable under the warranty above to the extent that Goods are covered by the manufacturer's warranty.

13.4 (\*) 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.

13.5 (\*) The Customer warrants that (where they have been made available by the Supplier) it has inspected the Goods prior to the supply and is satisfied that the Goods are suitable for its needs save that the Customer shall not be in breach of this clause in respect of any Goods, where the Supplier is in breach of the warranty set out at clause 13.1 in respect of those Goods.

13.6 (\*) 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.

13.7 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.

13.8 (\*) 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. The Customer's remedy for any breach of any of the warranties or representations set out in the Contract (whether made innocently or negligently) by the Supplier is limited to breach of contract.

13.9 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.

13.10 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.

13.11 (\*) 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. The Customer remains liable for the Goods notwithstanding that the Supplier or Customer has insurance in place which would indemnify either the Supplier or the Customer.

13.12 (\*) The Supplier shall have no Liability to the Customer for any of the following losses (whether direct or indirect):-

13.12.1 consequential losses;

13.12.2 loss of profits;

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- 13.12.3 loss of income;
- 13.12.4 economic and/or similar losses;
- 13.12.5 loss of anticipated savings;
- 13.12.6 loss of data;
- 13.12.7 wasted management or office time;
- 13.12.8 business interruption, loss of business, contracts and/or opportunity including loss of profits and/or damage to goodwill;
- 13.12.9 special damages and indirect losses however so arising; and/or
- 13.12.10 loss resulting from any inability to carry out any operations. For example, the Supplier shall not have any Liability if the Customer cannot complete a task because the Supplier supplied the wrong Goods.
- 13.13 (\*) 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.
- 13.14 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:-
  - 13.14.1 Liability for breach of contract;
  - 13.14.2 (\*) Liability in tort/delict (including negligence); and
  - 13.14.3 (\*) 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.
- 13.15 If the Customer is a Consumer, the Supplier has no liability for anything of which the Supplier was not aware or which could not have reasonably foreseen. However, the Supplier is not liable to a Consumer in respect of any business losses.
- 13.16 Regardless of anything else in the Contract, nothing in the Contract restricts the Supplier's Liability for (a) death or personal injury resulting from negligence for which it is responsible; (b) fraud; (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979; (d) defective products under the Consumer Protection Act 1987 (to the extent that this liability cannot be excluded); or (e) any other matter to the extent that it cannot be excluded or limited by law.

#### 14. GENERAL

- 14.1 Upon termination of the Contract the provisions of clauses 4.2, 4.4, 4.6, 7, 8, 9.1 and 9.3 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 0330 117 0815 or by e-mail at [onecall@totalukrentals.co.uk](mailto:onecall@totalukrentals.co.uk)
- 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 (\*) The Supplier may source Hired Goods from a third party. The Customer shall indemnify the Supplier against any Liability arising out of, or connected to, any claim brought by that third party, save to the extent that the Liability was a result of the Supplier's breach of the Contract or negligence.
- 14.7 (\*) 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

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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.

14.8 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.

14.9 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.

14.10 The Provision and Use of Work Equipment Regulations 1998 requires the Supplier to provide all of the necessary components to erect tower scaffold safely in accordance with the manufacturer's instructions. The Supplier does not accept Liability for accident or injury caused by the Customer's use of incomplete towers, or the Customer's failure to erect the tower scaffold in accordance the manufacturer's instructions.

14.11 The Supplier may transfer, assign, charge, or otherwise dispose of a Contract, or any of its rights or obligations arising under it, at any time during the term of the Contract, save that, where the Customer is a consumer, the Supplier warrants that the Customer's rights shall not be reduced or prejudiced in any way as a result of such transfer, assignment, sub contract, or other disposition.

14.12 The Supplier may subcontract its obligations under the Contract but the Supplier shall remain liable for the performance of its obligations to the same extent as it would have been but for the subcontracting.

14.13 (\*) These terms and conditions and any Confirmation constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.14 (\*) Each party agrees that it 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 terms and conditions or any Confirmation. Each party agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misstatement, based on any statement in this agreement.

14.15 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.

## **15. ADDITIONAL CONDITIONS**

15.1 The Supplier may insert and present any balance due and unpaid where the Customer has signed a blank or nil value debit or credit card voucher. The Supplier may also process interim payments in respect of any monies due from the Customer under the Contract by credit or debit card at any stage of the Contract.

## **16. DAMAGE WAIVER**

16.1 The Supplier may offer at its sole discretion a damage waiver service ("Damage Waiver") for certain Hire Goods upon payment of an additional charge (the "Damage Waiver Charge"). Where Damage Waiver is available as an option and the Customer has paid the appropriate Damage Waiver Charge, the Supplier will waive up to £500.00 of the cost that would otherwise be payable by the Customer in respect of any accidentally damaged Hire Goods, subject to the following terms. The Supplier reserves the right not to offer the Damage Waiver to particular customers in its absolute discretion and at any time, and further reserves the right to withdraw the Damage Waiver service at any time (on written notice). For the avoidance of doubt, where the Damage Waiver applies the Customer will still be liable for damage to Hired Goods over and above the £500 Damage Waiver limit in accordance with the remaining terms of these conditions.

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16.2 The Damage Waiver does not apply and the Customer will remain fully responsible for damage to Hire Goods if:

16.2.1 damage to Hire Goods was directly or indirectly the result of: misuse or use contrary to instructions; or malice or any deliberate act; or negligence or want of care; or an act or omission by any person who is not the Customer or in the Customer's direct employment; or failure to use and maintain the Hire Goods in accordance with the manufacturer's guidelines,

16.2.2 The Hire Goods are lost or stolen or not returned to the Supplier,

16.2.3 damage is not reported to the Supplier within 48 hours of the damage occurring or is caused by chemical spills, paint, concrete, masonry (or similar) spillage or overspray,

16.2.4 damage arises from failure to clean and conduct general routine maintenance of the Hire Goods, where cleaning and maintenance is the Customer's responsibility under the terms of the Contract,

16.2.5 all reasonable steps to protect the Hire Goods and prevent accidental damage have not been undertaken by the Customer,

16.2.6 any credit account of the Customer is in arrears at the time the Customer submits a Damage Waiver claim,

16.2.7 damage is the result of a breach by the Customer of any of the terms of the Contract.

16.3 The Damage Waiver is not an insurance for Hired Goods and does not cover loss or theft of the Hire Goods.

16.4 The Damage Waiver will cease to apply at the end of the relevant Hire Period (or when the Customer stops paying for hire of the relevant Hire Goods, if earlier). Damage Waiver does not provide compensation for loss or damage caused to the Customer or its property or to any third party or their property. The Customer has no right to any refund of the Damage Waiver Charge and there is no cash value to the £500 Damage Waiver limit or any unused portion thereof.

## **17. DATA PROTECTION ACT**

The Supplier's privacy policy explains how and why the Supplier collects, stores, uses and shares personal data. Please review the Supplier's privacy policy, which is available on its website at [www.totalukrentals.co.uk](http://www.totalukrentals.co.uk)

## **18. ADDITIONAL TERMS- ONLINE ORDERS ONLY**

18.1 The Supplier does not accept orders from Customers based outside the UK (unless expressly agreed otherwise by the Supplier in its absolute discretion and upon notice to the prospective Customer in question).

18.2 By placing an order through the Supplier's website, the Customer warrants that it is legally capable of entering into binding contracts and that the Customer is at least 18 years old.

18.3 After placing an order, the Customer will receive an email from the Supplier acknowledging that the Supplier has received the Customer's order. Please note that this does not mean that the order has been accepted. The Customer's order constitutes an offer to the Supplier to buy/hire the Supplier's Goods (as the case may be). All orders are subject to acceptance by the Supplier, and the Supplier will, if it accepts the order, confirm such acceptance by sending the Customer an email Confirmation that confirms that the Goods are ready for (as applicable) dispatch or collection from the collection outlet specified by the Customer when ordering the Goods. The Contract between the Supplier and the Customer will only be formed when the Supplier sends the Customer the Confirmation (or, if earlier, upon delivery to, or collection by, the Customer of the Goods).

18.4 The Contract will relate only to those Goods the Supplier has confirmed in the Confirmation. The Supplier will not be obliged to supply any other Goods which may have been part of the Customer's order until such Goods have been confirmed in a separate Confirmation.

18.5 If the Customer is collecting the Goods, it must collect the Goods within seven days of the date the Supplier sent the Customer the Confirmation, or (if later) within seven days of any specific collection date identified in the Confirmation. If the Customer does not do this then the Supplier may

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cancel the Customer's order.

18.6 If the Supplier has agreed to deliver the Goods, the Goods will be the Customer's responsibility from the time of delivery to the agreed delivery address, or otherwise from the time the Customer collects the Goods from the Supplier's premises.

18.7 Product prices are liable to change at any time, but changes will not affect orders in respect of which a Confirmation has been sent.

18.8 The Customer must notify the Supplier immediately if any employee who has been provided with an individual customer username and password ceases to be employed by the Customer in order that the Supplier can disable the account. The Customer is responsible for all activities which occur under the Customer's username and password, or under the Customer username and password of any of the Customer's employees or agents, save where such activities occur as a result of the Supplier's negligence or fault.

18.9 The Supplier's site contains a large number of Goods and it is always possible that, despite the Supplier's best efforts, some of the Goods listed on the Supplier's site may be incorrectly priced. The Supplier will normally verify prices as part of the Supplier's dispatch procedures so that, where the correct price is less than the Supplier's stated price, the Supplier will charge the lower amount when dispatching the Goods to the Customer. If the correct price is higher than the price stated on the Supplier's website, the Supplier will normally, at the Supplier's discretion, either contact the Customer for instructions before dispatching the Goods, or reject the Customer's order and notify the Customer that the Supplier are rejecting it.

18.10 If the pricing error is obvious and unmistakable and could have reasonably recognised by the Customer as an error, the Supplier does not have to provide the Goods to the Customer at the incorrect (lower) price.

18.11 Applicable laws require that some of the information or communications the Supplier sends to the Customer should be in writing. When using the Supplier's site, the Customer accepts that communication with the Supplier will be mainly electronic. The Supplier will contact the Customer by e mail or provide the Customer with information by posting notices on the Supplier's website. For contractual purposes, the Customer agrees to this electronic means of communication and the Customer acknowledges that all contracts, notices, information and other communications that the Supplier provides to the Customer electronically comply with any legal requirement that such communications be in writing. This condition does not affect the Customer's statutory rights.

18.12 Alternative dispute resolution is a process where an independent body considers the facts of a dispute and seeks to resolve it, without the parties having to go to court. If the Customer is a Consumer, and is not happy with how the Supplier has handled any complaint, it may want to contact the alternative dispute resolution provider used by the Supplier. If the Consumer's complaint cannot be resolved, the Supplier will contact the Consumer directly with its choice of alternative dispute resolution provider. In addition, please note that disputes may be submitted for online resolution to the European Commission Online Dispute Resolution platform.

**\*\* Drafted 1<sup>st</sup> February 2022 \*\***

**\*\* Revised 1<sup>st</sup> February 2023 \*\***

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