

TERMS AND CONDITIONS FOR THE HIRE OF EQUIPMENT AND SALE OF GOODS TO CONSUMERS AND BUSINESSES

FOR THE ATTENTION OF CONSUMERS

A Consumer means a natural person who is acting wholly or mainly for purposes which are unrelated to the person's trade, business or profession.

What these terms cover: These are the terms and conditions on which we supply and hire equipment and goods to you. Please note that these terms are used with traders and with Consumers and in certain areas different provisions apply, **Terms which are marked as being applicable to trade and business customers and with [■] are not relevant to Consumers.**

Why you should read them: Please read these terms and conditions carefully. These terms tell you who we are, how we will supply and hire equipment and goods to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms, please contact us to discuss.

Consumer Credit Act 1974: Where the hire of the Equipment is to a consumer who is an individual, in order to comply with the Consumer Credit Act 1974, the duration of the Hire Period shall not exceed 3 months, after which the contract between you and WHC shall be deemed to have automatically terminated.

CUSTOMERS WHO ARE HIRING THE EQUIPMENT AS A CONSUMER, THE CUSTOMERS ATTENTION IS DRAWN IN PARTICULAR TO THE SECTION 10 CONCERNING WHC LIABILITY TO THE CUSTOMER.

FOR THE ATTENTION OF TRADE AND BUSINESS CUSTOMERS

Customers who hiring the Equipment or purchasing Goods acting for purposes relating to its trade, business craft or profession, please note the following additional clauses:

- Hire Charges and Deposit – clauses 4.7 – 4.11
- Credit – clause 5
- Delivery and Operators – clauses 6.3 – 6.4
- Warranty – clauses 9.7 – 9.8
- Liability – clauses 10.4 – 10.11
- Consequences of Termination – clauses 12.4 – 12.6

Should there be any inconsistency between these clauses and other clauses in the terms and conditions, the aforementioned clauses shall prevail.

1. INFORMATION ABOUT WHC AND HOW TO CONTACT WHC

- 1.1 **Who we are:** We are WHC Hire Services Limited, a company registered in England and Wales. Our company registration number is 03322262 and our registered office is at Chargrove House, Shurdington Road, Cheltenham, Gloucestershire, GL51 4GA. Our registered VAT number is 793516500.

- 1.2 **How to contact us:** You can contact us by telephoning us at 01684 377977 OT 01905 356075 or by writing to us via email at hire@whchire.com or to WHC Hire Services Limited, Alexandra Way, Tewkesbury, Gloucestershire, GL20 8TB.
- 1.3 **How we may contact you:** If we have to contact you we will do so by telephone or by writing to you at the email address or postal address provided.

2. DEFINITIONS AND INTERPRETATION

- 2.1 The following definitions and rules of interpretation apply in this agreement.

Additional Charges means charges applicable to the provision of the Equipment which are charged in addition to the Hire Charges including those additional costs and expenses referred to in these Terms and Conditions.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Consumer: an individual acting for purposes which are wholly or mainly outside that individual's trade, business craft or possession.

Delivery: the transfer of physical possession of the Equipment to the Customer at the Supplier's premises or the Site.

Deposit: any advance payment required by WHC in relation to the Equipment which is held as security by WHC on the terms set out at Clause 4.

Goods: any accessories and/or consumable items specified in the Order which are sold to the Customer by WHC.

Equipment: the items of equipment to be hired by the Customer listed in the Order, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for the Equipment.

Order: the Customer's order for the Equipment and/or the Goods, as set out in the order form, the Customer's written acceptance of the Supplier's quotation, overleaf, or in a hire contract between WHC and the Customer, as the case may be.

Hire Charges: the charges detailed in the "Hire Charges Price Guide" attached to the Order and found at <http://www.whchire.com/hire-charge-guide.aspx>, as amended from time to time.

Hire Period: the period starting when the Equipment is delivered to the Customer or from when the Customer collects the Equipment from WHC and ending when WHC regains possession.

Operator: the operator or driver provided to the Customer by WHC.

Site means any premises or location at which the Equipment is to be delivered to or collected from or is otherwise located with prior consent of WHC.

Supplier means (where applicable) the third party from whom WHC will hire the Equipment and then rehire such Equipment to the Customer pursuant to these Terms and Conditions

VAT: value added tax chargeable under the Value Added Tax Act 1994.

- 2.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 2.3 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 2.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3. EQUIPMENT HIRE

- 3.1 WHC shall hire the Equipment to the Customer for use at the Customer's premises (Site) subject to the terms and conditions of this agreement. The Equipment must not be moved from the Site to which it was delivered or consigned without the prior written permission of WHC.
- 3.2 WHC shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with the Customer's quiet possession of the Equipment.
- 3.3 The Customer will ensure that each Order is accurate and complete and that the Equipment is suitable for the Customers' requirements.
- 3.4 At the start of the Hire Period WHC may need to substitute the Equipment with an alternative of equivalent standard if the Equipment cannot be supplied for any reason. You may elect to refuse a substitute we offer in which case we will refund any money you have paid in advance for the Equipment.
- 3.5 Where an Order is fulfilled by one of WHC's Suppliers, the Equipment may not be delivered by WHC. The Customer will ensure that it carries out adequate inspection of the Equipment on Delivery and shall note any shortages or damages on the delivery documents and the charges for the Equipment will be payable by the Customer to WHC in accordance with the payment terms set out in these Terms and Conditions.

WHC may invoice the Customer for any Additional Charges which may be levied against WHC by the Supplier in relation to the Equipment.

- 3.6 WHC may substitute the Equipment from time to time with an alternative piece of equipment of an equivalent standard during the Hire Period. WHC will give the Customer reasonable notice if it intends to do this.
- 3.7 WE WILL PROVIDE THE CUSTOMER WITH SAFETY AND OPERATING INSTRUCTIONS FOR SAFE USE OF THE EQUIPMENT. THE CUSTOMER MUST ONLY OPERATE THE EQUIPMENT IN ACCORDANCE WITH THE OPERATING AND SAFETY INSTRUCTIONS SUPPLIED WITH IT OR ANY OTHER SAFETY INSTRUCTION GIVEN TO YOU BY US. IF YOU DO NOT UNDERSTAND ANY PART OF THE RELEVANT OPERATING AND SAFETY INSTRUCTIONS YOU MUST SEEK ASSISTANCE FROM A SUITABLY QUALIFIED PERSON OR US BEFORE USING THE EQUIPMENT. WHC WILL NOT ACCEPT ANY RESPONSIBILITY FOR ANY DAMAGE AND/ OR INJURY CAUSED BY YOUR FAILURE TO COMPLY WITH OPERATING AND SAFETY INSTRUCTIONS SUPPLIED TO YOU. IT IS YOUR RESPONSIBILITY TO ENSURE THAT YOU ARE FULLY COVERED BY INSURANCE FOR ANY RISKS INVOLVED IN THE USE OF THE EQUIPMENT, SUCH AS PERSONAL INJURY OR DEATH TO USERS OF THE EQUIPMENT OR OTHER PERSONS.
- 3.8 THIS SAFETY WARNING IS NOT IN ANY WAY INTENDED TO EXCLUDE OR LIMIT OUR LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE, BREACH OF CONTRACT OR OTHER DEFAULT.

4. HIRE CHARGES AND DEPOSIT

- 4.1 **Where to find the charges:** The Hire Charges of the Equipment and the price of the Goods may be found in the "Hire Charges Price Guide" provides by WHC and found at <http://www.whchire.com/hire-charge-guide.aspx>
- 4.2 **When you must pay and how you must pay:** The Customer shall pay the Hire Charges and any Additional Charges to WHC in full and cleared funds at the point in which the Equipment is returned and shall pay for Goods prior to delivery. Alternatively, for customers with an account, the Customer shall pay the Hire Charges, and Additional Charges for the Equipment and the purchase price for the Goods within 30 days of the date of WHC's invoice.
- 4.3 WHC will be entitled to vary the Hire Charges and any Additional Charges at any time by giving written notice to the Customer to reflect any variation in the cost of supplying the Equipment which arises as a consequence of any variation in the Customers' requirements for the Equipment, any increase in the costs payable to the Supplier, any information provided by the Customer being inaccurate or incomplete or any failure or delay by the Customer in providing information.

- 4.4 **Deposit:** Where WHC requires a deposit for the Equipment, it must be paid in advance of Delivery.
- 4.5 **VAT:** The Hire Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 4.6 **WHC can charge interest if the Customer pays late:** If the Customer does not make payment to WHC by the due date, WHC may charge interest to you on the overdue amount at the rate of 8% a annum above the base lending rate of National Westminster Bank Plc from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay WHC interest together with any overdue amount.
- 4.7 **Deductions from the Deposit:** The Deposit is a deposit against default by the Customer of payment of any Hire Charges, Additional Charges or any loss of, replacement costs or damage caused to the Equipment. If the Customer fails to make payment of any Hire Charges, Additional Charges or causes any loss or damage to the Equipment (in whole or in part), WHC shall be entitled to apply the Deposit against such default, loss or damage. The Deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Hire Period.
- 4.8 In the event that any sums fall over due on a Customer's account then the total account will become due on demand. The Customer will be responsible for reasonable legal charges incurred by WHC in the recovery of sums due or the recovery of the Equipment. In addition WHC will be entitled to suspend further services to the Customer.

CLAUSES 4.7 – 4.10 ARE ONLY APPLICABLE TO TRADE AND BUSINESS CUSTOMERS

- 4.9 **[■]** If WHC has agreed trade credit terms with the Customer, the Customer must pay the Hire Charges within 30 days of receipt of an invoice.
- 4.10 **[■]** All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.11 **[■]** If the Customer fails to make any payment due to WHC by the due date for payment, then, without limiting WHC's remedies under clause 11, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether

before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 4.12 Credit and debit card details shall be held and managed by World Pay and WHC reserves the right to automatically charge such card with any unpaid charges resulting from the Hire Period or any extended Hire Period.
- 4.13 If the Equipment is lost, damaged, destroyed or stolen whilst in the Customer's care, the Customer will be liable for the applicable Hire Charges in respect of the agreed minimum Rental Period and subsequently, such proportion of the Hire Charges to compensate for lost Hire Charges from future rental periods until such time as the Equipment is repaired or replaced in accordance with clause 10.3.
- 4.14 If the Customer without the prior written permission of WHC parts with control of the Equipment, the Customer shall immediately upon WHC request procure the return of the Equipment. If the Equipment is not returned to the Customer within 5 days of WHC's request, the Equipment shall be deemed to be lost and the Customer shall be responsible for the replacement of the Equipment and the Hire Charges and any Additional Charges will continue to apply until settlement is made to the satisfaction of WHC.

5. CREDIT

THIS CLAUSE 5 IS ONLY APPLICABLE TO TRADE AND BUSINESS CUSTOMERS

- 5.1 The Customer's credit limit shall be as specified by WHC from time to time and may, at WHC's discretion, be reduced.
- 5.2 Any such credit arrangement shall be non-regulated and therefore not governed by the Consumer Credit Act.
- 5.3 WHC may terminate or suspend the Customer's right to hire the Equipment and/or purchase the Goods upon credit at any time with immediate effect, by giving notice in writing if the Customer exceeds the credit limit or breaches any of these terms.

6. DELIVERY AND OPERATORS

- 6.1 **Collection of the Equipment and Goods:** Unless otherwise agreed, it is the responsibility of the Customer to collect the Equipment and/or Goods from WHC and return them to WHC at the end of the Hire Period.
- 6.2 WHC is not responsible for delays outside of its control. If the supply of the Equipment is delayed by an event outside of WHC's control (including but not limited

to disruption or delay to WHC's business or supply chains arising from the UK's exit from the European Union or any form of health epidemic) then WHC will contact the Customer as soon as possible to let the Customer know and WHC will take steps to minimise the effect of the delay. WHC will not be liable for delays caused by an event outside its control.

CLAUSES 6.3 – 6.4 ARE ONLY APPLICABLE TO TRADE AND BUSINESS CUSTOMERS

- 6.3 [■] Where WHC is supplying an Operator, WHC shall supply a person competent in operating the Equipment for the purpose they are supplied. The Operator shall be under the control and direction of the Customer and shall be regarded as servants or agents of the Customer. The Customer shall be solely responsible for all claims arising in connection with the operation of the Equipment by the Operator.
- 6.4 [■] The Customer shall be responsible for compliance with all relevant regulations issued by the Government or Local Authorities, including regulations relating to any environmental acts and health and safety at work. The Customer shall indemnify the Supplier for and against any losses, charges or fines incurred by the Supplier as a result of the operation of the Equipment during the Hire Period.

7. TITLE, RISK AND INSURANCE

Equipment

- 7.1 **The Equipment will remain the property of WHC:** The Equipment will at all times remain the property of WHC, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these terms and conditions).
- 7.2 **When the Customer becomes responsible for the Equipment:** The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. Delivery occurs when the Equipment is made available to the Customer at the delivery address (whether at WHC premises or at the Site) The Equipment shall remain at the sole risk of the Customer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Equipment is redelivered to WHC. Redelivered means that once loading of the Equipment on to the collection vehicle of WHC or its Supplier is complete.
- 7.3 Where a Customer wishes to collect or return WHC owned Equipment from or to the WHC branch or place of business, it shall be the Customers responsibility to prepare its vehicle so that the collection/return can be carried out without damage being caused to such vehicle or injuries being sustained by the Customer or by WHC staff. The Customer shall hold WHC harmless in the event of contravention of this. Should

the Customer have any doubt whether this can be complied with it should ask WHC to arrange a collection or delivery subject to charges as applicable.

7.4 During the Hire Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as WHC may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as WHC may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
- (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as WHC may from time to time consider reasonably necessary and advise to the Customer.

7.1 **Notice of damage or loss:** The Customer shall give immediate written notice to WHC in the event of any loss, accident, damage to or defect in the Equipment arising out of or in connection with the Customer's possession or use of the Equipment or if the Customer considers the Equipment may cause damage to the Customer's property.

7.2 The Customer shall grant (or shall procure that WHC, the Supplier or their authorised representative are granted) access to the Site at all such reasonable times on reasonable notice to inspect the Equipment to ensure the Customer's compliance with its obligations under these Terms and Conditions to carry out any inspections or repairs of the Equipment.

7.3 If the Customer fails to effect or maintain any of the insurances required under this agreement, WHC shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer as an Additional Charge.

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

Goods

7.5 **The Customer will own the Goods upon payment:** Title to the Goods shall not pass to the Customer until WHC has received payment in full and cleared funds.

7.6 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as WHC's bailee;
- (b) store the Goods separately from all other goods held by the Customer;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery.

7.7 The Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before WHC receives payment for the Goods.

8. CUSTOMER'S RESPONSIBILITIES

8.1 **Care of the Equipment:** The Customer shall during the term of this agreement:

- (a) ensure that the Equipment is kept and operated in a suitable environment, which shall meet any requirements set out by WHC or the manufacturer, used only for the purposes for which it is designed, and operated in a proper manner and in accordance with any operating instructions provided by WHC;
- (b) where the Equipment requires fuel, oil and/or electricity, ensure that the proper type and/or voltage is used and that where appropriate, the Equipment is properly installed by a qualified and competent person;
- (c) Where the Equipment is supplied with fuel, the Customer shall return the Equipment with the same or a greater amount of fuel. Where the Equipment requires fuel, the Customer shall during the term of the Contract ensure that the proper fuel type is used. Customers must use un-rebated fuel (white diesel) to refuel the Equipment and is prohibited from using a rebated fuel.
- (d) Where the Customer is found to have used a rebated fuel, WHC shall be entitled to charge the Customer any costs incurred in returning the Equipment to a hireable condition. This may include, but is not limited to the costs of draining and flushing the fuel tank and system, the fitting of new fuel filters and refilling the tank with un-rebated fuel, together with the costs incurred by WHC in disposing the rebated fuel. In circumstances where the Customer has drained the fuel tank itself, WHC will be entitled to charge the Customer for any costs that are incurred by WHC in returning the Equipment to a hireable condition.
- (e) In the event of an HMRC inspection finding that the Customer has used rebated fuel in the Equipment and the Equipment is seized. The customer will be liable for any financial penalties/charges imposed on WHC by HMRC and

any associated costs relating to the seizure as well as the charges for returning the Equipment to a hireable condition.

take such steps (including compliance with all laws, and applicable regulations including any health and safety legislation which relates to the use of the Equipment and in accordance with any safety and usage instructions provided by WHC) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being used, cleaned or maintained;

- (f) maintain the Equipment at its own expense in good and substantial repair in order to keep it in as good an operating condition as it was on Delivery (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and will repair any damage to the Equipment, however the Customer shall not repair or allow any third party to carry out the repairs other than the Supplier or as directed by WHC, the Customer shall notify WHC immediately if any repair is necessary;
- (g) In the case of wheeled Equipment, you will be responsible for repairing any punctures that occur and/or replacing any tyre damaged (fair wear and tear excepted) while the Equipment is in your possession. No refund of Hire Charges will be made by WHC in respect of stoppages caused by punctures or tyre damage occurring during the Hire Period.
- (h) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair or maintenance as soon as practicable) by the same component or by one of a similar make or model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall pass to WHC immediately upon installation.
- (i) ensure that at all times the Equipment remains identifiable as being WHC's property and not remove any labels or name plates from and/or interfere with or make any alterations to the Equipment, its working mechanisms or any other parts of the Equipment;
- (j) keep WHC fully informed of all material matters relating to the Equipment, including immediately notifying WHC of any breakdown, loss and/or damage to the Equipment, other property and/or injury to any person;
- (k) at all times keep the Equipment in the Customer's control and keep WHC informed of where it is located, the Equipment is to remain at the location it is delivered or consigned unless WHC's prior written approval is provided to move the Equipment to a different location;
- (l) permit WHC or its authorised representative to inspect the Equipment at all reasonable times and for this purpose to enter any premises at which the Equipment is located, and will allow reasonable access and facilities for the inspection;

- (m) not, without the prior written consent of WHC, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment to any third party or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (n) not without the prior written consent of WHC, attach the Equipment to any land or building so that it becomes a permanent or immovable fixture on such land or building. If the Equipment does become fixed to any land or building then the Equipment must be capable of being removed and the Customer shall repair and make good any damage caused by the fixing or removing of the Equipment from any land or building and will be responsible for all losses, costs or expenses suffered by WHC as a result of such fixing or removal;
- (o) not do or permit any act or thing which will or may jeopardise the right, title and/or interest in the Equipment and, where the Equipment has become fixed to any land or building, the Customer must take all steps to ensure that WHC may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period after, including by obtaining from any person having an interest in such land or building, confirmation in writing that that person does not have any rights in the Equipment and gives WHC a right to enter onto such land or building to remove the Equipment;
- (p) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is confiscated, seized or taken, the Customer will notify WHC and the Customer shall at its own expense use its best endeavours to release the Equipment immediately.
- (q) not use the Equipment for any unlawful purpose;
- (r) deliver the Equipment at the end of the Hire Period or on earlier termination of this agreement to WHC's premises or if necessary allow WHC or its representatives access to any premises to collect the Equipment; and
- (s) not do or permit anything to be done which could invalidate the insurances referred to in *clause 7*.
- (t) Not to take the Equipment out of the UK.
- (u) Be responsible for the security of the Equipment whilst in your possession and take all appropriate measures to secure the Equipment at the Site including when not in use.

8.2 The Customer acknowledges that WHC shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors.

9. WARRANTY

- 9.1 **The Customer's legal rights:** WHC warrants that the Equipment and/or the Goods shall conform with its description (as made available by WHC), be of satisfactory quality and fit for any purpose held out by WHC. If at any time during the Hire Period, the Customer becomes aware of a breach of this clause, the Customer shall give written notice of breach to WHC as soon as reasonably possible once the Customer has become aware of the breach.
- 9.2 Where the Equipment has broken down or is faulty or defective and is not readily repairable, WHC will substitute it with Equipment of a similar type. If no suitable substitute is available immediately, WHC will suggest alternative dates when you can hire the substitute Equipment. If the suggested replacement or the suggested alternative dates are not satisfactory to you, you can terminate the hire and claim for a refund for the period during which you could not make use of the Equipment as detailed in Clause 9.3 below
- 9.3 **The Customer's remedies:** If the Equipment or the Goods are not as described, fit for purpose or satisfactory quality during the expected life of the Goods and Equipment, the Customer's is entitled to the following:
- (a) Up to 30 days: if the Goods are faulty, a refund. If the Equipment is faulty, a refund for the period of hire not received;
 - (b) Up to 6 months: if the Goods cannot be repaired or replaced, a full refund in most costs. If the Equipment cannot be repaired or replaced, a refund for the period of hire not received.
- The above rights are subject to certain exceptions. For detailed information please visit the Citizens Advice website at www.adviceguide.org.uk or call 03454 04 05 06.
- 9.4 **The Customer's obligation to return rejected Equipment and Goods:** If the Customer wishes to exercise its legal rights to reject the Equipment and/or Goods, it must return them to WHC in person, post them back to WHC or allow WHC to collect them. WHC shall pay the costs of returning the Equipment and/or Goods.
- 9.5 **Manufacturer's warranty:** Insofar as the Equipment and/or Goods comprises or contains equipment or components which were not manufactured or produced by WHC, the Customer shall be entitled only to such warranty or other benefit as WHC has received from the manufacturer.
- 9.6 **Breakdowns:** Any breakdown of the Equipment must be notified to WHC by the Customer immediately. WHC will, at its own cost, carry out routine maintenance and repairs during the Hire Period and shall reimburse the Hire Charges or extend the Hire Period for such period of time during the Hire Period that the Equipment was

unavailable, unless such breakdown is due to the fault of the Customer. The Customer shall be responsible for all expenses and loss suffered arising from any breakdown caused as a result of the Customer's negligence, breach of these terms or misuse.

- 9.7 **Repair:** The Customer must not repair or attempt to repair the Equipment unless authorised to do so by WHC.

CLAUSES 9.7 – 9.8 ARE ONLY APPLICABLE TO TRADE AND BUSINESS CUSTOMERS

- 9.8 WHC shall use all reasonable endeavours to remedy or replace, free of charge, any material defect in the Equipment which manifests itself within six (6) months from Delivery, or if shorter, the Hire Period, provided that:

- (a) the Customer notifies WHC of any defect in writing within a reasonable time of becoming aware of the defect;
- (b) WHC is permitted to make a full examination of the alleged defect;
- (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than WHC's authorised personnel; and
- (d) the defect is directly attributable to defective material, workmanship or design.

- 9.9 If WHC fails to remedy any material defect in the Equipment in accordance with clause 9.6, WHC shall, at the Customer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Hire Charges payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).

10. LIABILITY

- 10.1 **WHC Is responsible to the Customer for foreseeable loss and damaged caused by it:** Nothing in these terms shall exclude or limit any statutory rights of the Customer which may not be excluded or limited by law. If WHC fails to comply with these terms, it is responsible for loss or damage suffered by the Customer as a foreseeable result of breaking this contract or failing to use reasonable care and skill. WHC is not responsible for loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time of the Order, WHC and the Customer knew it might happen, for example if it was discussed during the sales process.
- 10.2 **WHC is not liable for business losses:** WHC only hires the Equipment and supplies the Goods to Consumers for domestic and private use. If the Equipment and/or Goods is used for any commercial, business or re-sale purpose WHC will have no

liability to the Customer for any loss of profit, loss of business, business interruption or loss of business opportunity.

- 10.3 If the Equipment is lost, damaged, destroyed or stolen whilst in the Customer's care, the Customer will be liable for the full cost of repairing or replacing the Equipment less the amount WHC receives from insurance (if any). The Customer will be liable for all costs and expenses in respect of rectifying any damage to the Equipment (fair wear and tear excepted) which occurs during the Hire Period and cleaning the Equipment following collection of the Equipment, in each case to return the Equipment to a condition fit for rehire. Such costs and expenses shall be confirmed to the Customer by WHC, subject to any supporting documentation. In addition the Customer will continue to pay the charges until any repairs and or cleaning have been completed. The Customer will be liable for the replacement cost of the Equipment in respect of lost or stolen Equipment and or Equipment which is beyond economic repair and the Customer will continue to pay the charges until the replacement cost has been received by WHC
- 10.4 Nothing in this agreement shall exclude or in any way limit:
- (a) either party's liability for death or personal injury caused by its own negligence;
 - (b) either party's liability for fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be excluded by law.

AS A CONSUMER THE CUSTOMER HAS LEGAL RIGHTS AND REMEDIES IN RELATION TO THE PROVISION OF THE EQUIPMENT. ADVICE ABOUT THE CUSTOMERS LEGAL RIGHTS AND REMEDIES IS AVAILABLE FROM THE CITIZENS ADVICE BUREAU. NOTHING IN THESE TERMS WILL AFFECT THE CUSTOMERS LEGAL RIGHTS AND REMEDIES

CLAUSES 10.6 – 10.12 ARE ONLY APPLICABLE TO TRADE AND BUSINESS CUSTOMERS

- 10.5 Without prejudice to clause **Error! Reference source not found.**, WHC's maximum aggregate liability for breach of this agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the value of the Hire Charges and/or the Goods.
- 10.6 This agreement sets forth the full extent of WHC's obligations and liabilities in respect of the Equipment and its hiring and sale of Goods to the Customer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on WHC except as specifically stated in this agreement. Any

condition, warranty or other term concerning the Equipment and/or Goods which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.

- 10.7 [■] WHC shall have no liability to the Customer to the extent that the Customer is covered by, or benefits from, any insurance policy but the Customer remains liable to the Equipment and/or Goods notwithstanding that the WHC or the Customer has insurance in place which would indemnify them.
- 10.8 [■] The Customer shall indemnify WHC on demand against any loss or damage to the Equipment arising out of or in connection with any negligence, misuse, or mishandling of Equipment in accordance with clause 8.2 and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of this agreement.
- (a) [■] The Customer shall indemnify WHC against all losses, costs, charges, damages and expenses incurred as a result of the Equipment being confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, including but not limited to loss of profit, loss of revenue, loss of business, wasted management or office time, business interruption and indirect or consequential loss or damage,
- 10.9 [■] WHC shall have no Liability for additional damage, loss, claims, costs or expenses causes or contributed to by the Customer's continued use of defective Equipment and/or Goods after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 10.10 [■] Without prejudice to clause **Error! Reference source not found.**, WHC shall not be liable under this agreement for any:
- (a) loss of profit;
 - (b) loss of revenue
 - (c) loss of business;
 - (d) wasted management or office time;
 - (e) business interruption; or
 - (f) indirect or consequential loss or damage,

in each case, however caused, even if foreseeable.

11. TERMINATION

11.1 **WHC may end the contract if the Customer breaks it:** Without affecting any other right or remedy available to it, WHC may terminate the contract at any time by writing to the Customer if:

- (a) The Customer does not, within a reasonable time of WHC asking for it, provide WHC with information necessary for WHC to provide the Equipment.
- (b) The Customer does not, within a reasonable time, allow WHC or its Supplier to deliver or collect the Equipment to the Customer or the Customer does not collect them from WHC.
- (c) the Customer does not make payment on the due date for payment and does not make payment within seven (7) days of being reminded payment is due;
- (d) the Customer commits a material breach of any other term which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified to do so;
- (e) the Customer repeatedly breaches any of these terms;
- (f) the Customer fails to return the Equipment to WHC after being requested to do so in accordance with its rights under these terms;
- (g) the Customer (**being an individual**) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (**being a company**) suspends, or threatens to suspend, payment of its debts is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets or a petition is filed in connection with the winding up of the Customer;
- (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within fourteen (14) days;
- (i) If the Supplier terminates its agreement with WHC.
- (j) (in relation to Trade Customers only) the Customer (or its associated persons, agents or subcontractors) is shown not to be running its business in accordance with applicable law and regulations and with high levels of governance and ethical standards or cannot evidence such standards by way of appropriate policies and controls (or otherwise) to WHC's reasonable satisfaction, including but not limited to compliance with the Bribery Act 2010, the Modern Slavery Act 2015, the Criminal Finances Act 2017 (anti facilitation of tax evasion) and the General Data Protection Regulation

11.2 **A material breach means a substantial breach:** For the purposes of clause 11.1(d), **material breach** means a breach (including an anticipatory breach) that is serious in

the widest sense of having a serious effect on the benefit which WHC would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in clause 8,

over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

- 11.3 This agreement shall automatically terminate if a total loss occurs in relation to the Equipment.

CLAUSES 11.4 – 11.5 ARE ONLY APPLICABLE TO CUSTOMERS WHO ARE CONSUMERS

- 11.4 Where the hire is to a Customer who is a Consumer under the Consumer Credit Act 1974, the Hire Period shall not exceed 88 days, after which time the relevant contract shall be deemed to have automatically terminated.

- 11.5 **The Customer's rights to end the contract:** If the Customer ends the contract if Delivery is late, or for one of the reasons set out in clauses 9.1 and 9.2, the contract will end immediately and WHC will refund any sums paid by the Customer for Equipment and/or Goods which have not been provided but WHC may deduct (or, if the Customer has not paid a Deposit, charge the Customer) for the net costs incurred a result of ending the contract in accordance with clause 12.2.

- 11.6 **The Customer's rights to cancel a contract made away from WHC's premises for the purchase of Goods:** The Customer may cancel a contract for the purchase of the Goods up 14 days after the day on which the contract was entered into if it was not made at WHC's premises. The Customer shall not incur any liability and WHC will refund the price of the Goods.

12. CONSEQUENCES OF TERMINATION

- 12.1 **What happens when the contract ends:** without prejudice to the remainder of these Terms and Conditions upon termination of the contract between WHC and the Customer, however caused:
- (a) the Customer's shall return the Equipment to WHC; and
 - (b) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to WHC all Hire Charges and other sums due but unpaid

at the date of termination together with any interest accrued plus any Additional Charges that WHC notify the Customer are outstanding.

12.2 **The Customer must compensate WHC if it breaks the contract:** Upon termination of this agreement in the situations set out in clause 11.1 and 11.3 or any other break of the contract by the Customer which is accepted by WHC or pursuant to clause 11.3, the Customer shall pay to WHC a sum equal to the whole of the Hire Charges that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Hire Period. Such sums may be partly or wholly recovered from any Deposit.

12.3 The sums payable in clause 12.2 is the agreed compensation for WHC's loss and shall be payable in addition to the sums payable in accordance with clause 12.1(b).

CLAUSES 12.4 – 12.6 ARE ONLY APPLICABLE TO TRADE AND BUSINESS CUSTOMERS

12.4 Upon termination, however caused, WHC may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located.

12.5 Without prejudice to any other rights or remedies of the Customer, the Customer shall pay to WHC any costs and expenses incurred by WHC in recovering the Equipment and/or collecting any sums due under these terms.

12.6 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

13. RETURN OF EQUIPMENT

13.1 **The Equipment must be returned in good condition:** The Customer must return the Equipment to WHC in the same condition as when it was supplied. Although the Customer will not be responsible for reasonable wear and tear which may occur during the Hire Period.

13.2 **The time the Equipment must be returned:** The Equipment must be returned to WHC no later than 3 hours after the time and date on which the Hire Period ends, as stated in the Order. The Customer will be charged for each 24 hour period that the Hire Period is extended.

13.3 **The Equipment should be returned clean:** The Customer must clean the Equipment before returning it to WHC otherwise cleaning charges will apply.

14. **FORCE MAJEURE**

Neither party shall have any liability to the Customer for any delay and/or non-performance to the extent that such delay or failure to perform any obligations if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

15. **OTHER IMPORTANT TERMS**

- 15.1 **WHC may transfer this agreement to someone else.** WHC may transfer its rights and obligations under these terms to another organisation. WHC will always inform the Customer in writing if this happens and will ensure that the transfer will not affect the Customer's rights under these terms and conditions.
- 15.2 **The Customer needs WHC's consent to transfer its rights to someone else.** The Customer may only transfer its rights and obligations under these terms to another person if WHC agrees to this in writing.
- 15.3 **Nobody else has any rights under this contract.** This contract is between the Customer and WHC. No other person shall have any rights to enforce any of its terms. Neither party will need to get the agreement of any other person in order to end this contract or make any changes to these terms.
- 15.4 **If a court finds part of this contract illegal, the rest will continue in force.** Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 15.5 **Even if WHC delays in enforcing this contract, WHC can still enforce it later.** If WHC does not insist immediately that the Customer do anything it is required to do under these terms, or if WHC delays in taking steps against the Customer in respect of it breaking this contract, that will not mean that the Customer does not have to do those things and it will not prevent WHC taking steps against the Customer at a later date. For example, if the Customer misses a payment and WHC does not chase the Customer but continue to hire the Equipment, it can still require the Customer to make the payment at a later date.
- 15.6 **WHC amends its Terms and Conditions from time to time.** Every time a Customer orders Equipment from WHC, the terms in force at the time of the Order and available at whchire.com will apply to the contract between the Customer and WHC.
- 15.7 **How will WHC use a Customers personal information** WHC is a data controller of any personal information a Customer provides to us. WHC will collect and process

such information in order to process and fulfil an Order. Where your Order is fulfilled by one of our Suppliers, your data will be provided to the Supplier for such purpose.

- 15.8 If the Customer is a Consumer providing WHC with its own personal information, the Customer is referred to WHC'S GDPR policy on our website at www.whchire.com for further information on how personal information is used and rights in relation to that information.
- 15.9 If the Customer is providing personal data of another individual to WHC, the Customer must tell that individual that the Customer is providing their information to WHC and show them a copy of this notice.
- 15.10 **Confidentiality**, each party will keep secret and confidential all confidential information concerning the business affairs, customers, clients or suppliers of the other party which is disclosed or obtained in connection with the Contract and shall not disclose the same save for the purpose of the Contract or with the prior written consent of the relevant party.
- 15.11 The obligations of confidentiality in this clause shall not extend to any matter which;
- 15.11.1 is in or enters the public domain other than as a result of a breach of the obligations of confidentiality under the contract
- 15.11.2 is independently disclosed by a third party entitled to disclose the same; or
- 15.11.3 Is required to be disclosed under any applicable law, or by order of a court, governmental body or authority of competent jurisdiction.
- 15.12 If any provision of this Agreement is held to be unlawful, void or unenforceable then that provision will be deemed severable and will not affect the validity and enforceability of the remaining provisions, to the extent permitted by law.
- 15.13 Notices from you to us should be sent to us at our principal office address. Notices from us to you will be sent to the address provided to us by you or to any other address which you have notified to us in writing. You will notify us immediately in writing of any change to your address.
- 15.14 This Agreement incorporates all of the terms agreed between you and us. It cannot be varied except by a document signed by you and us on or after the date of this Agreement.

- 15.15 A party who is not a party to this Agreement shall have no right to enforce any term of this Agreement under the Contracts (Rights of Third) Parties Act 1999.
- 15.16 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 15.17 These terms are governed by English law and the Customer can bring legal proceedings in respect of the hire of the Equipment and/or sale of the Goods in the English courts. WHC and the Customer both agree that the Courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with these Terms and Conditions and any and all Contracts.