

Terms & Conditions - Hire Contract

1. **INTERPRETATION**
 1.1 The definitions and rules of interpretation in this condition apply in these conditions.
Customer: the person, business or company who hires the Hire Goods from the Supplier.
Supplier: Crescent Industrial
Contract: any contract between the Supplier and the Customer for the hire of the Hire Goods incorporating these conditions.
Hire Goods: the hire goods specified in the Contract, including any replacement or part supplied to the Customer under the Contract.
Fixed Term: the duration of hire specified in the Contract (including Saturdays, Sundays and bank holidays).
 1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
 1.3 Words in the singular include the plural and in the plural include the singular.
2. **BASIS OF CONTRACT**
 2.1 These conditions shall be incorporated into the Contract in their entirety and shall prevail over any of the Customer's terms and conditions.
 2.2 These conditions are subject to any special conditions in the Contract.
 2.3 The Hire Goods are hired subject to their availability for hire 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 Hire Goods being unavailable for hire due to circumstances beyond the Supplier's control.
 2.4 These conditions apply to all the Supplier's hire activities and any variation to these conditions and any representations about the Hire Goods shall have no effect unless expressly agreed in writing. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Nothing in this condition shall exclude or limit the Supplier's liability for fraudulent misrepresentation.
 2.5 Any quotation is valid for a period of 30 days only from its date unless previously withdrawn by the Supplier.
3. **COMMENCEMENT AND DURATION**
 3.1 The Fixed Term shall commence on the date specified in the Contract, unless the Supplier has agreed to deliver the Hire Goods, in which case the Fixed Term shall commence on the date the Hire Goods are delivered by the Supplier.
 3.2 Subject to condition 11, the Fixed Term shall expire at 4.00pm on the final day of the Fixed Term and neither the Supplier nor the Customer is entitled to terminate the Contract before that time unless agreed between the parties in writing.
 3.3 If the Customer requires any Hire Goods beyond or in addition to that specified in the Contract (including but not limited to additional Hire Goods and/or an extension to the Fixed Term) then the Supplier will use all reasonable endeavours to meet the Customer's requirements but will have no obligation to do so.
4. **DELIVERY**
 4.1 It is Customer's responsibility to collect the Hire Goods from the Supplier before 4:00pm on the commencement date specified in the Contract and to return them to the Supplier before 4:00pm on the final day of the Fixed Term.
 4.2 If the Supplier agrees to deliver and/or collect the Hire Goods to and/or from the Customer, it shall do so at the Customer's expense and to and/or from the location specified in the Contract or agreed between the parties in writing.
 4.3 The Hire Goods must remain at the specified location for the duration of the Fixed Term unless otherwise agreed in writing by the Supplier.
 4.4 In the event that the Hire Goods are moved from the specified location without the written consent of the Supplier, the Supplier reserves the right to charge such additional charges (and the Customer agrees to pay such additional charges) as may be incurred by the Supplier in connection with the servicing and/or collection of the Hire Goods.
 4.5 Any obligation of the Suppliers in respect of performance dates are approximate only and time shall not be of the essence in respect of delivery, collection or commencement of the Fixed Term.
 4.6 The Customer shall be responsible for providing at its expense adequate and appropriate equipment and labour for loading or unloading the Hire Goods.
5. **RISK/TITLE**
 5.1 Hire Goods hired shall remain the property of the Supplier at all times
 5.2 Risk in the Hire Goods shall pass immediately to the Customer when the Hire Goods leave the physical possession of the Supplier.
 5.3 Risk in the Hire Goods shall remain with the Customer until the Hire Goods are returned to the physical possession of the Supplier.
6. **CUSTOMERS COVENANTS**
 6.1 The Customer shall be responsible at its own expense for all daily checks and inspections of the Hire Goods as stipulated by the Supplier and/or recommended by the manufacturer and/or required by any legislation or regulations and shall return the Hire Goods in good and clean condition.
 6.2 Unless otherwise specified in the Contract, it is the responsibility of the Customer to ensure that servicing of all Hire Goods is carried out by an appropriately qualified professional and in accordance with the Supplier's recommendations.
 6.3 Subject to condition 7, the Customer shall be responsible for any loss of or damage to the Hire Goods however caused (other than through the negligence of the Supplier or its employees) whilst the Hire Goods are at the risk of the Customer and if any such loss or damage renders the Hire Goods unsuitable or unavailable for hire the Customer shall continue to pay the hire charge for the remainder of the Fixed Term and the Supplier shall be under no obligation to supply replacement Hire Goods.
 6.4 The Customer shall keep the Hire Goods free from any lien and any distress, execution or other legal process and not let, lend, sell, assign, transfer, charge, encumber, dispose of or otherwise deal with or part with the possession or control of the Hire Goods or purport to do so.
 6.5 Subject to condition 6.1 the Customer shall not without the Supplier's prior written consent cause or permit any repair, servicing, alteration, addition or modification to be carried out on or made in respect of any of the Hire Goods.
 6.6 The Customer shall ensure that the Hire Goods are operated safely at all times and in accordance with any written instructions supplied by the Supplier.
 6.7 The Customer shall grant to the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Hire Goods are or may be stored for the purpose of inspecting and examining the condition of the Hire Goods or, where the Customer's right to possession has terminated, to recover them.
 6.8 The Customer shall obtain and comply with all necessary licences and permissions for the use of the Hire Goods and not use the Hire Goods or permit the Hire Goods to be used contrary to law or any regulation and ensure that the Hire Goods are used exclusively for the lawful purposes of the Customer's business.
 6.9 The Customer shall fully indemnify the Supplier against all claims, proceedings, cost, expense, loss, damage and liabilities made against or incurred by the Supplier by reason of or in connection with any loss, death, injury or damage (other than death or personal injury resulting from the negligence of the Supplier) suffered by any person from the presence of the Hire Goods and/or their use whilst at the Customer's risk and/or any act or omission of the Supplier, its employees or agents.
7. **QUALITY**
 7.1 You acknowledge that you have selected the Hire Goods; that the Hire Goods have been provided by us at your request for the purposes of this agreement and for use by you in the course of a business carried on by you; and that relying upon your own skill and judgement you are satisfied that the Hire Goods are suitable for the requirements of your business.
 7.2 The Supplier warrants that (subject to the other provisions in these conditions) throughout the Fixed Term, the Hire Goods shall:
 (a) be free from defects; and
 (b) be reasonably fit for purpose; and
 7.3 The Supplier shall not be liable for a breach of any of the warranties in condition 7.1 unless:
 (a) the Customer gives written notice of the defect to the Supplier within 7 days of the time when the Customer discovers or ought to have discovered the defect; and
 (b) the Supplier is given a reasonable opportunity after receiving the notice of examining such Hire Goods and the Customer (if asked to do so by the Supplier) returns such Hire Goods to the Supplier's place of business at the Supplier's cost for the examination to take place there.
 7.4 The Supplier shall not be liable for a breach of any of the warranties in condition 7.1 if:
 (a) the Customer makes any further use of such Hire Goods after giving notice under condition 7.2; or
 (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of Hire Goods or (if there are none) good trade practice; or
 (c) the defect is a result of the Customer's negligence or failure to fulfil any obligation in condition 6; or
 (d) the Customer alters or repairs such Hire Goods without the written consent of the Supplier.
 7.5 Subject to the other provisions in these conditions, if any of the Hire Goods do not conform with any of the warranties in condition 7.1 the Supplier shall at its option repair or replace such Hire Goods (or the defective part) and shall do so at the Supplier's own expense.
 7.6 Subject to the other provisions contained in these conditions, if any of the Hire Goods do not conform with any of the warranties in condition 7.1 the Customer shall be entitled to a deduction from the hire charge, an amount equal to the hire charge payable under the Contract apportioned on a pro rata basis for each full day in which any Hire Goods are unusable or unavailable to the Customer due to and to the extent that Hire Goods do not conform with said warranties.
 7.7 If the Supplier complies with condition 7.4 and condition 7.5 it shall have no further liability for a breach of any of the warranties in condition 7.1.
8. **INSURANCE**
 8.1 The Customer shall at its cost insure the Hire Goods and keep the Hire Goods insured for as long as the Hire Goods are at the risk of the Customer for not less than the full replacement value of the Hire Goods (as determined from time to time by the Supplier) with such persons and under such a form of policy as approved by the Supplier, against loss or destruction or damage by accident, fire, theft, third party liability and any other foreseeable risk as is reasonable to insure against having in mind the type of Hire Goods in question and their use from time to time (the "Insurance Policy").
 8.2 The Customer shall pay all premiums in respect of the Insurance Policy and do everything necessary to maintain the Insurance Policy and refrain from committing, causing or permitting any act or omission which may invalidate the Insurance Policy or any other policy of insurance relevant to the Hire Goods.
 8.3 The Insurance Policy and any supporting documentation, receipts and/or correspondence to and/or from the relevant insurers shall at the request of the Supplier be delivered to and retained by the Supplier.
 8.4 If the Customer defaults in effecting or maintaining the Insurance Policy or defaults in any obligation under or in connection with it, without prejudice to any other right or remedy of the Supplier, the Supplier may effect and maintain the necessary insurance in respect of the Hire Goods and pay all premiums under it or as the case may be, pay the premiums which the Customer has not paid and in either case the Customer shall repay all such premiums to the Supplier on demand.
 8.5 The Customer hereby irrevocably appoints the Supplier as its agent for the purposes of negotiating with the insurers and receiving all monies which may become payable under the Insurance Policy and any other policy of insurance relating to the Hire Goods and for
- the purposes of instituting proceedings for the recovery of such monies and giving a full and final discharge to the insurers on payment of such monies.
- 8.6 The damage to or loss of Hire Goods will not affect the continuance of the Contract or the Customer's liability for the hire charge.
9. **HIRE CHARGE**
 9.1 The hire charges for the Hire Goods shall be set out in the Contract.
 9.2 The hire charges are calculated on the basis of a 5 day week from Monday to Friday inclusive.
 9.3 The hire charge for the Hire Goods shall be exclusive of any VAT and all costs or charges in relation to delivery, servicing, postage, packaging, loading, unloading, carriage, freight, servicing, parts, labour, bank charges and insurance all of which amounts the Customer shall pay in addition when it is due to pay for the Hire Goods.
10. **PAYMENT**
 10.1 Where the Customer does not have an authorised credit account with the Supplier, the total hire charge for the Hire Goods together with all other payments due to the Supplier shall be payable immediately.
 10.2 Where specified in the Contract, the Initial Payment must be made to validate the Contract.
 10.3 Where the Customer has an authorised credit account, the hire charge shall be payable in the instalments specified in the Contract, and the Customer shall pay each instalment together with all other payments due under the Contract by the end of the month following the date of invoice.
 10.4 If all or any of the Hire Goods are not returned to the Supplier at the end of the Fixed Term, without prejudice to any other right or remedy of the Supplier, the Customer will pay to the Supplier an amount equal to the hire charge payable under the Contract in respect of the Hire Goods concerned, apportioned on a pro rata basis for each day that the Customer retains possession of the relevant Hire Goods.
 10.5 Time for payment shall be of the essence.
 10.6 No payment shall be deemed to have been received until the Supplier has received cleared funds.
 10.7 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.
 10.8 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
 10.9 If the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
11. **TERMINATION**
 11.1 Without prejudice to any other rights or remedies which the parties may have, the Supplier may terminate the Contract without liability to the Customer immediately on giving notice to the other if, (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or (b) the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of that party being notified in writing of the breach; or (c) circumstances exist or arise which, in the reasonable opinion of the Supplier, materially and adversely affect the performance of, or the ability to perform, the Customer's duties and obligations under the Contract; or (d) the Customer ceases or threatens to cease to carry out its business; or (e) the Customer becomes bankrupt or makes a composition or arrangement with its creditors or being a limited company has a Petition issued for the Insolvency of that company or goes into liquidation or carries out its business under an Administrator, Receiver, Manager or Liquidator or enters into a scheme or arrangement for the benefit of its creditors or any of them.
 11.2 On termination of the Contract by either party and for any reason:
 11.2.1 All sums due to the Supplier under the Contract and not yet paid shall become payable immediately;
 11.2.2 The Hire Goods will remain the property of the Supplier;
 11.2.3 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
 11.3 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect: (a) condition 11; (b) condition 12; and (c) condition 15.6.
12. **LIMITATION OF LIABILITY (THE CUSTOMER'S ATTENTION IS DRAWN TO THIS CONDITION IN PARTICULAR)**
 12.1 Subject to condition 7, the following provisions set out the Supplier's entire financial liability (including any liability for acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 (a) any breach of these conditions;
 (b) any use made or resale by the Customer of any of the Hire Goods, or of any product incorporating any of the Hire Goods; and
 (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
 12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
 12.3 Nothing in these conditions excludes or limits the liability of the Supplier:
 (a) for death or personal injury caused by the Supplier's negligence; or
 (b) for any matter which it would be illegal for the Supplier to exclude or attempt to exclude liability; or
 (c) for fraud or fraudulent misrepresentation.
 12.4 Subject to condition 12.2 and condition 12.3:
 (a) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 (b) the Supplier shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever which arise out of or in connection with the Contract.
 (c) Without prejudice to the generality of condition 12.4 (b), the Supplier shall incur no liability in respect of any loss of use of the Hire Goods between 4pm on a Friday and 9am on the following Monday, or any loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever arising out of or in connection with any failure or defect in the Hire Goods.
13. **ASSIGNMENT**
 13.1 The Supplier may assign the Contract or any part of it to any person, firm or company.
 13.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.
14. **FORCE MAJEURE**
 14.1 The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Hire Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.
15. **GENERAL**
 15.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.
 15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
 15.3 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
 15.4 Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
 15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
 15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
16. **NOTICES**
 16.1 All notices between the parties about the Contract shall be in writing and delivered by hand or sent by first class post or sent by fax or email:
 (a) in case of notices to the Supplier to its place of business or such changed address as shall be notified to the Customer by the Supplier; or
 (b) (in the case of notices to the Customer) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Supplier by the Customer.
 16.2 Notices shall be deemed to have been received:
 (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 (b) if delivered by hand, on the day of delivery; or
 (c) if sent by fax or email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.