

# HIGHBOURNE GROUP SALE TERMS (GOODS AND SERVICES) NOVEMBER 2021

Your attention is in particular drawn to terms 4 and 9.

If you are a consumer (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) we recognise that you may have additional rights under statute if we fail to carry out our obligations to you and for the return of defective goods and confirm your statutory rights are not affected by these terms.

## 1. Definitions and Interpretations

1.1 In these terms "we" or "us" means the member company of the Highbourne Group specified in the contract for the sale of goods and/or services to you; "you" means the person, firm or company who purchases the goods and/or services from us; and "our" and "your" shall be construed accordingly and "contract" means any order which has been accepted by us.

1.2 "Highbourne Group" means Highbourne Group Limited (company number 06216887 and whose registered address is Lodge Way House Lodge Way, Harlestone Road, Northampton, England, NN5 7UG) and its subsidiary companies (as defined in s1159 Companies Act 2006), and any references to Group shall be construed accordingly.

1.3 References to any statutory provision shall include (i) any subordinate legislation made under it (ii) any provision which it has modified or re-enacted and (iii) any provision which subsequently supersedes it or re-enacts it.

## 2. Application of Terms

2.1 These terms apply to all sales of goods and/or services by us to the exclusion of all other terms (including any which you purport to apply) unless expressly agreed in writing in advance by one of our Directors.

2.2 Each order or acceptance of a quotation for goods and/or services by you shall be deemed to be an offer by you to buy goods and/or services subject to these terms. No order or acceptance of a quotation by you shall be deemed to be accepted by us until written confirmation of order is issued by us or (if earlier) we begin to process your order. We shall be entitled to withdraw any quotation at any time (whether or not already accepted by you).

2.3 You acknowledge that you have not relied on any statement or representation made or given on our behalf. Any estimate of quantities needed, advice as to the suitability of any goods for a particular purpose and any plan or measurement given by us is given for guidance only (based on your information) and without liability on our part. No allowance is made by us for additional materials, wastage or installation. You must satisfy yourself that all goods and/or services ordered are correct.

2.4 Any typographical error or clerical omission in any sales literature, quotation, price list or other document issued by us may be corrected without liability on our part.

2.5 Information about how we use and store your personal information, and your rights, can be found on our credit account application form and/or in the Privacy Policy available on our website and as updated from time to time.

## 3. Description of Goods

3.1 The quantity and description of the goods are set out in our quotation or confirmation of order. We may supply goods in either metric or imperial sizes in the nearest equivalent measure and goods may be charged in metric allowing for conversion.

3.2 All samples, drawings, descriptive matter, specifications and advertising are issued or published for the sole purpose of giving an approximate idea of the described goods. They shall not form part of the contract and this is not a sale by sample. Each order shall be considered a separate order and we are unable to guarantee that further orders for the same goods will match the previous order.

3.3 Where fine or special tolerances are required in the goods supplied beyond those generally accepted in the building trade, no liability shall attach to us unless such tolerances are notified in writing to us at the time of order and we have acknowledged in writing that we are prepared to accept such order.

## 4. Delivery of Goods

4.1 Unless otherwise agreed by us, delivery of the goods shall take place at our place of business. Delivery shall occur when you take possession of the goods at our premises or (where we agree to deliver) when the goods are ready for unloading at the delivery address.

4.2 Any dates and times we specify for delivery of the goods are an estimate. We shall not be liable to you if we do not deliver on or at any particular date or time. Time for delivery shall not be made of the essence by notice.

4.3 If you fail to accept delivery of any goods when they are ready for delivery, or we are unable to deliver the goods because you have not provided appropriate instructions, documents or consents, we shall be entitled to immediate full payment and risk in the goods shall pass to you. We may store such goods until delivery and you shall be liable for all related costs and expenses arising from such non delivery including transport and storage costs. If you fail to accept delivery of the goods within 6 months of the date of contract, we may sell or dispose of those goods (whether or not you have paid for them). Storage or disposal costs shall be recoverable from you. Any net proceeds of any sale shall be held on trust for you.

4.4 You will deliver to site provided that there is a suitable road

to the point where delivery is requested. If no such road exists, delivery will be made to the nearest point at which, in the driver's opinion, the vehicle can safely and lawfully unload. Except where we use a vehicle-mounted crane/ fork truck, you shall be responsible for safely and lawfully unloading the goods and shall provide all necessary labour and equipment. We may charge you an additional fee if you delay in taking delivery of the goods when tendered. If any goods, packaging or container has been delivered and deposited, whether on the public highway or elsewhere, you shall be responsible for all steps that need to be taken for the protection of persons or property in relation to such goods, packaging or containers and shall indemnify us in respect of all or any costs, claims, losses or expenses which we may incur as a result of such delivery.

4.5 We shall not be liable for any shortages in quantity delivered unless you give written notice to us of such shortages within two working days of delivery. In any event our liability shall be limited to making good the shortfall or (at our option) issuing a credit note or refund at the pro rata contract rate against any invoice raised for such goods.

4.6 We may deliver the goods by separate instalments. Each instalment shall be a separate contract and cancellation or termination of one instalment shall not entitle you to cancel any other instalment.

4.7 Any query about delivery shall be made as soon as possible and in any event within 28 days of the date when the goods would in the ordinary course of events have been delivered else the goods shall be deemed to have been delivered in accordance with the contract. We are not obliged to provide proof of delivery and / or collection after a period of 28 days.

4.8 We shall not be responsible for taking back any non-chargeable packaging/pallets.

4.9 The cost of any testing of the goods that we deem is necessary whether or not in your presence, will be charged to you, unless prior written agreement has been obtained from us. If you (or your representative) delay in attending such tests, after seven days' notice of the place and time of such tests, the tests will proceed in your absence and shall be deemed to have been carried out in your presence.

## 5. Risk and Ownership of Goods

5.1 The goods are at your risk from the time of delivery or deemed delivery.

5.2 Ownership of the goods shall not pass to you until we have received in full (in cleared funds) all sums due to us in respect of the goods and all other sums which are or become due to us from you on any account or (if later) the time of delivery.

5.3 Until ownership of the goods has passed to you, you shall hold the goods on a fiduciary basis as our bailee and store the goods (at no cost to us) in satisfactory condition and in such a way that they remain readily identifiable as our property and you shall tell us immediately where the goods are situated.

5.4 Subject to 5.5, you may resell the goods before ownership has passed to you provided that any sale shall be effected in the ordinary course of your business at full market value and you shall deal as principal; you shall hold all proceeds of sale on trust for us and assign to us all rights and claims which you may have against your customer arising from such sales until full payment is made.

5.5 Your right to possession of, and authority to sell, the goods shall terminate immediately (and you shall immediately deliver the goods to us at your cost and risk) if we notify you to such effect or on the happening of any event set out in 10.3(a)-(i) (whichever is earlier) and you shall immediately notify us in writing upon the happening of any such event.

5.6 You grant to us and our agents an irrevocable licence at any time to enter any premises (with and without vehicles) where the goods are or may be stored in order to inspect them or, where your right to possession has terminated, to recover them.

5.7 Where we are unable to determine whether any goods are the goods in respect of which your right to possession has terminated, you shall be deemed to have sold all goods of the kind sold by us to you in the order in which they were invoiced to you.

## 6. Provision of Services

6.1 Where the goods supplied include services by us, our agents or subcontractors, you shall (where necessary) allow us safe and reasonable access to the site within our normal working hours to carry out the services.

6.2 The price quoted for such services assumes that:

- the site is ready and suitable for the services to commence at the agreed time;
- the services are to be carried out within our normal working hours;
- adequate site access is available at all times; and
- adequate mechanical lifting equipment is provided by you in the event that the services are to be carried out above ground level. If any of these assumptions proves incorrect, we shall be entitled to vary the price.

6.3 You shall provide a safe environment and all necessary consents, information, and resources for us, our agents and subcontractors to carry out the services.

6.4 In relation to any installation services, you are responsible for insuring the goods (whether before or after installation) and shall notify your insurers that we will be carrying out such services on site. You must protect carpets, furniture and all other items.

6.5 Any dates and times we specify for commencement and completion of the services are an estimate. We shall not be liable if we do not carry out the services on or at any particular date or time. Time for performance shall not be made of the essence by notice.

6.6 If we provide design services, all copyright and other intellectual property rights created, developed or used shall remain the sole property of us or our licensors.

## 7. Price and Additional Charges

7.1 Unless we otherwise agree in writing, the price payable for the goods and/or services shall be the price applicable on the date of delivery or deemed delivery for goods and the date the services are carried out for services.

7.2 The price for the goods and/or services shall be exclusive of any value added tax, which shall be payable by you at the rate applicable at the tax point.

7.3 We may at any time after acceptance of an order, but prior to delivery, revise the price payable for the goods and/or services to take account of increases in costs including, without limitation, costs of any goods or materials, carriage, labour or overheads, the increase or imposition of any tax duty or other levy and variation in exchange rate.

7.4 Unless we otherwise agree in writing, we may charge you the cost of delivering the goods to you.

7.5 We may charge for any special packaging to cover the cost of labour and materials. We will charge for pallets, crates and cases but these charges will be credited in full if such items are returned to us carriage paid and in good condition within seven days of delivery. Where we agree to collect such pallets, crates and cases, you shall make such items available for collection on request.

## 8. Payment and Interest

8.1 Payment for goods and/or services supplied during a month on a credit account shall be due and paid in full in one payment not later than the last day of the month following the month of delivery or deemed delivery of the goods and/or services. If you default in making payment, the entire balance of your account shall be payable immediately and we may charge interest together with costs and expenses in accordance with 8.4.

8.2 For non credit account purchases, payment shall be with the order or, at our discretion, on delivery or deemed delivery.

8.3 Time for payment shall be of the essence. You shall make all payments in pounds sterling and in full without any deduction.

8.4 If you fail to pay us any sum due (and whether or not any part of your account is subject to query), we may, in addition to our rights under 10.3, appropriate any payment made by you to such of the goods and/or services (or such goods or services supplied under any other contract between you and us) as we may think fit; and you shall be liable to pay us interest on such sum at the annual rate of 4% above the base lending rate from time to time of the Royal Bank of Scotland Plc, accruing on a daily basis, or, at our option, interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002) from the due date for payment until payment is made in full, whether before or after any judgment, together with all costs and expenses incurred by us in recovering sums due or exercising our rights under this provision, including our debt recovery fees at a rate of 6% of the total amount outstanding.

8.5 Credit accounts are opened at our discretion and are

subject to satisfactory references. We will set a maximum amount of credit allowable upon each account and withdraw credit facilities at any time without explanation. Payments made to an account may at our discretion restore your ability to borrow again (in which case it shall be up to the limit). You agree that we may obtain, retain, and provide to third parties, references as to your financial standing. Any change in the constitution of your organisation must be notified to us in writing prior to it occurring in order that credit facilities to the reconstituted organisation may be put in place, subject always to our discretion and our confirmation in writing. Until new credit facilities are agreed, the existing entity and any new entity shall be jointly and severally liable for any debt due to us.

## 9. Liability

9.1 If any goods or services are defective due to defective workmanship or material, we shall (at our option) repair or replace such goods (or the defective part) or rectify the defective service or refund the price of such defective goods or services at the pro rata contract rate provided that:

- you give us written notice of the defect within seven days of the date of delivery or completion of the services or, in the case of a defect which is not discoverable by reasonable examination, within seven days of the time when you discover or ought to have discovered the defect (and in any event within twelve months from the date of delivery or completion of the services);
- we are given a reasonable opportunity after receiving notice to examine such goods and/or services (in situ) and (if asked to do so by us) you return such goods to our place of business for the examination to take place there;
- you do not make any further use of such goods after giving such notice;
- the defect is not due to wilful damage, negligence (other than ours), fair wear and tear, alteration or repair of such goods without our prior written consent or incorrect storage, application, movement, installation, commissioning, use or maintenance of the goods (other than by us); and
- the defect is not due to any act or omission of you, your agents or contractors.

9.2 Our entire liability for defective goods and services is set out in 9.1 and in particular we shall not be responsible for either the cost of removing the goods from any place where they are installed or fixed (or making good the place after removal) or for the cost of installing or fixing any repaired or replacement goods unless due to our defective service.

9.3 On request, we will provide information about any manufacturer's guarantee offered and available to you in respect of the goods but we are not legally responsible for any obligation under manufacturer's guarantees. Where the goods contain a warranty or guarantee offered by us please refer to the special conditions applicable on our website or available upon request.

9.4 Save as expressly set out in these terms, all warranties and other terms implied by statute or common law (save for the term implied as to title) are, to the fullest extent permitted by law, excluded from the contract.

9.5 Our 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.

9.6 We shall not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or loss of anticipated savings, in each case whether direct, indirect or consequential, or any other indirect losses whatsoever and howsoever caused.

9.7 Nothing in these terms excludes or limits our liability for (a) death or personal injury caused by our negligence, (b) fraud or fraudulent misrepresentation; and (c) any other matter which it would be illegal for us to exclude.

9.8 Where goods are manufactured in compliance with any designs, specifications or drawings supplied by you or your customer, you shall indemnify us against all proceedings, costs, claims, losses or demands in respect of any infringement or alleged infringement of any intellectual property rights whatsoever of third parties in any part of the world.

## 10. Cancellations and Returns

10.1 We may, at our discretion, accept or

reject the cancellation of any contract or the return of any goods not required. Any such cancellation or return shall be on such terms as we specify and in particular we may charge you a handling fee and all costs incurred on cancelled Orders.

10.2 Where you are a "consumer" under a "distance contract" (both as defined in the Consumer Contracts (Information, Cancellation & Additional Charges) Regulations 2013) you may cancel a contract within fourteen days after the date the goods are delivered. You must return the goods to the branch from which they were delivered or request us to collect the goods, at your cost. This term shall not apply to any goods specially obtained or made for you or which are liable to deteriorate or expire rapidly. Any refund will only include standard delivery charges (where relevant).

10.3 We shall be entitled to cancel or suspend a contract if you fail to pay us any sum due pursuant to the contract

- (whether or not any part of your account is subject to query) or any of the following events occurs or we believe is likely to occur:
- (a) you have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take a benefit for the relief of insolvent debtors; or
  - (b) you convene a meeting of creditors or enter into liquidation; or
  - (c) you have a receiver and/or manager, administrator or administrative receiver appointed over your undertakings or any part;
  - (d) a resolution is passed or a petition presented to any court for your winding-up or for the granting of an administration order in your respect, or any proceedings are commenced relating to your insolvency or possible insolvency; or
  - (e) you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or
  - (f) you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade; or
  - (g) any event similar to the above occurs; or
  - (h) you fail to observe or perform any of your obligations under the contract or any other contract between us and you; or
  - (i) you encumber or in any way charge any of the goods.

#### 11. Health and Safety

Certain goods supplied by us could, if incorrectly used, give rise to risks to health and safety. Information in respect of such goods is available from us. You undertake that you will ensure compliance by your employees, agents and customers with any instructions given by us or the manufacturer or our supplier and will take any other steps or precautions, having regard to the nature of the goods, as are necessary to preserve the health and safety of any person handling, using or disposing of them.

#### 12. Waste

You will be responsible for the disposal of any waste arising from the goods and will comply with all applicable laws, regulations and waste management licences relating to such waste, including the appropriate disposal by you of any goods marked with a crossed out wheellie bin symbol, save where you are a consumer and it is our responsibility at law. You will indemnify us against all costs, claims, liabilities and expenses arising from any breach by you of this provision.

#### 13. Force Majeure

We may defer the date of delivery, cancel the contract or reduce the volume of the goods and/or services ordered by you (without liability to you) if we are unable to deliver or supply due to any cause beyond our reasonable control (including the acts or omissions of our suppliers and subcontractors).

#### 14. Export / Overseas Contracts (if applicable)

In relation to goods sold outside the UK, the Channel Islands and the Isle of Man, risk in the goods shall pass to you when they leave our premises. Shipping and insurance shall be payable by you but will be managed by us unless otherwise agreed. You are responsible at your own expense for obtaining any licence and complying with any export or import regulations in force within the UK and any country for which the goods are destined. Certain goods imported from the United States of America by us are subject to specific restrictions. We reserve the right not to supply certain customers or countries and to require from you full details of the end use and final destination of the goods.

#### 15. Compliance with Bribery Legislation

You agree that you will not, in connection with the goods or services to be supplied under this contract, bribe or attempt to bribe us, or any of our employees, agents or affiliates nor cause us to be in violation of any applicable bribery or anti money laundering laws. We may terminate the contract in the event of your breach of this clause. You shall indemnify us against all liabilities, costs, expenses, damages, claims, demands and losses suffered or incurred by us arising out of or in connection with any breach of this clause, whether or not the contract has been terminated.

#### 16. General

16.1 Any notices given pursuant to or in relation to the contract shall be in writing and addressed to the party concerned at its principal place of business or last known address. Any notice shall be deemed delivered two days after posting or on the next working day after fax transmission.

16.2 Any provision of the contract found to be invalid or unenforceable shall, to such extent, be deemed severable

and the remaining provisions of the contract shall continue in full force and effect.

16.3 Failure or delay by us in enforcing any contract term shall not be construed as a waiver of any of our rights under the contract.

16.4 You shall not be entitled to assign or subcontract any of your rights or obligations under the contract.

16.5 Save for any member company of the Highbourne Group who shall be entitled to enforce any provision of the contract, no person who is not a party to the contract shall have a right to enforce any term of the contract which expressly or by implication confers a benefit on that person.

16.6 Any dispute or claim arising in connection with the contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts, save that if you are domiciled in Scotland (within the meaning of the Civil Jurisdiction and Judgments Act 1982) then the contract shall be construed in accordance with Scottish law and shall be subject to the exclusive jurisdiction of the Scottish courts.

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## STANDARD CONDITIONS OF HIRE

### 1. Interpretation

1.1 In these conditions the following words have the following meanings:

“**Contract**” means a contract which incorporates these conditions and made between you and us for the hire of Hire Goods; “**Deposit**” means any advance payment required by us in relation to the Hire Goods which is to be held by us as security; “**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;

“**Hire Goods**” means any machine, article, tool and/or device, together with any accessories specified in a Contract which are hired to you;

“**Hire Period**” means the period commencing when you hold 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 you into our possession; or (ii) the physical repossession or collection of Hire Goods by us;

“**Liability**” means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;

“**Rental**” means our charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period; “**Services**” means the services and/or work (if any) to be performed by us for you in conjunction with the hire of Hire Goods including any delivery and/or collection.

“**We**” or “**us**” means any member company of the Highbourne Group, as specified in the Contract and will include its employees, agents and/or duly authorised representatives;

“**You**” means the person, firm, company or other organisation hiring Hire Goods, and “**your**” shall be construed accordingly.

### 2. Basis of Contract

2.1 Hire Goods are hired subject to them being available for hire at the time required by you. We will not be liable for any loss suffered by you because the Hire Goods are unavailable for hire where this is due to circumstances beyond our control.

2.2 If you are an individual and the hire would be covered by the Consumer Credit Act 1974 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.

2.3 Nothing in this Contract shall exclude or limit any of your statutory rights to the extent they may not be excluded or limited because you are acting as a consumer. Where you are 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 effect 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. Payment

3.1 The amount of any Deposit, Rental and/or charges for any Services shall be as quoted to you or otherwise as shown in our current price list from time to time. Where a Deposit is required, it must be paid in advance of you hiring the Hire Goods. We may also require an initial payment on account of the Rental in advance of you hiring the Hire Goods.

3.2 You shall pay to us the Rental, charges for any Services, and/or any other sums payable under the Contract at the time and in the manner agreed. Our prices are, unless otherwise stated, exclusive of any applicable VAT which you shall also be liable to pay.

3.3 Payments by you on time are an essential condition of the Contract. Payment shall not be deemed to be made until we have received either cash or cleared funds in respect of the full amount outstanding.

3.4 If you fail to make any payment in full on the due date we may charge you interest (both before and after judgment) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of National Westminster Bank plc whichever is higher. This interest shall be compounded with quarterly rests.

3.5 You shall pay all sums due to us without any set-off, deduction, counterclaim and/or any other withholding of monies.

3.6 We may set a reasonable credit limit for you. We reserve the right to terminate or suspend the Contract if allowing it to continue would result in you exceeding your credit limit or the credit limit is already exceeded.

3.7 We reserve the right to store your credit card details on our password protected customer account system and further reserve the right to use such details to collect payment for future Rentals made by you.

### 4. Risk Ownership and Insurance

4.1 Risk in the Hire Goods will pass immediately to you when they leave our physical possession or control.

4.2 Risk in the Hire Goods will not pass back to us until they are back in our physical possession. This shall apply even if we have agreed to cease charging the Rental.

4.3 Ownership of the Hire Goods remains with us at all times. You have no right, title or interest in the Hire Goods except that they are hired to you.

4.4 You 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 you may re-hire the Hire Goods to a third party with our prior written consent.

4.5 We may provide reasonably priced insurance in respect of the Hire Goods at additional cost to the Rental. Alternatively we may require you to insure the Hire Goods on such reasonable terms and for such reasonable risks as we may specify. The proceeds of any such insurance shall be held by you in trust for us and be paid to us on demand. You must not compromise any claim in respect of the Hire Goods and/or any associated insurance without our written consent.

### 5. Delivery, Collection and Services

5.1 It is your responsibility to collect the Hire Goods from us and return them to us at the end of the Hire Period. If we agree to deliver or collect the Hire Goods to and/or from you, we will do so at our standard delivery cost and such delivery and/or collection will form part of the Services.

5.2 Where we provide Services the persons performing the Services are deemed to be your servants or agents and they are under your direction and control. You shall be solely responsible for any instruction, guidance and/or advice given by you to any such person and for any damage which occurs as a result of such person following your instructions, guidance and/or advice except to the extent that such person is negligent.

5.3 You will allow and/or procure sufficient access to and from the relevant site and sufficient unloading space, facilities, equipment and access to power supplies and utilities for our employees, sub-contractors and/or agents to allow them to carry out the Services. You 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.

5.4 If any Services are delayed, postponed and/or cancelled due to you failing to comply with your obligations you will be liable to pay our additional standard charges from time to time for such delay, postponement and/or cancellation except where you are acting as a consumer and the delay is due to a Force Majeure event.

### 6. Care of Hire Goods

6.1 You shall:

6.1.1 not remove any labels from and/or interfere with the Hire Goods, their working mechanisms or any other parts of them and 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 you;

6.1.2 notify us immediately after any breakdown, loss and/or damage to the Hire Goods;

6.1.3 take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;

6.1.4 notify us of any change of your address and upon our request provide details of the location of the Hire Goods;

6.1.5 permit us at all reasonable times to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;

6.1.6 keep the Hire Goods at all times in your possession and control and not remove the Hire Goods from the United Kingdom without our prior written consent;

6.1.7 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 we have agreed to provide them as part of any Services;

6.1.8 not do or omit to do any thing which will or may be deemed to invalidate any policy of insurance related to the Hire Goods which is notified to you;

6.1.9 not continue to use Hire Goods where they have been damaged and will notify us 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;

6.1.10 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; and

6.1.11 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.

6.2 The Hire Goods must be returned by you in good working order and condition (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.

### 7. Breakdown

7.1 Allowance will be made in the Rental for any non-use of the Hire Goods due to breakdown caused by an inherent fault and/or fair wear and tear on condition that you inform us as soon as practicable of the breakdown and we are unable to repair or replace the Hire Goods within a reasonable time.

7.2 You shall be responsible for all expenses, loss (including loss of Rental) and/or damage suffered by us arising from any breakdown of the Hire Goods due to your negligence, misdirection and/or misuse of the Hire Goods.

7.3 We will at our 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. You 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 our negligence while carrying out routine maintenance and/or repairs.

7.4 You must not repair or attempt to repair the Hire Goods unless authorised to do so by us in writing.

### 8. Loss or Damage to the Hire Goods

8.1 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, you shall be liable to pay us for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire and to pay the Rental, in accordance with clause 8.3, until such repairs and/or cleaning have been completed.

8.2 You will pay to us the new replacement cost of any Hire Goods, which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to us under any policy of insurance taken out in accordance with these conditions.

8.3 You shall pay the Rental up to and including the date you notify us that the Hire Goods have been lost, stolen and/or damaged beyond economic repair. From that date until we have replaced such Hire Goods you shall pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages equal to two thirds of the Rental that would have applied for such Hire Goods for that period. We shall use our reasonable commercial endeavours to purchase replacements for such Hire Goods as quickly as possible using the monies paid under clause 8.2.

**9 Termination by Notice**

- 9.1 If the Hire Period has a fixed duration, subject to clause 10 neither we nor you may terminate the Contract before the expiry of that fixed period unless you and we agree.
- 9.2 If the Hire Period does not have a fixed duration either you or we may terminate the Contract upon giving to the other party any agreed period of notice.
- 9.3 If no period of notice has been agreed or specified you may terminate the Hire Period by the physical return of the Hire Goods to us and we may terminate the contract by giving not less than 14 days' notice to you.

**10. Default**

- 10.1 You shall be deemed to be in default if you:
  - 10.1.1 fail to make any payment to us when due without just cause;
  - 10.1.2 breach the terms of the Contract and, where the breach is capable of remedy, have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
  - 10.1.3 persistently breach the terms of the Contract;
  - 10.1.4 provide incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
  - 10.1.5 pledge, charge or create any form of security over any Hire Goods, or cease or threaten to cease to carry on business, or propose to compound with your creditors, create a trust deed for your creditors, apply for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any of your property, have a Bankruptcy Petition/Petition for Sequestration presented against you or you take or suffer any similar action in any jurisdiction;
  - 10.1.6 being a company, cease or threaten to cease to carry on business, enter into voluntary or compulsory liquidation, have a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of your assets, any attachment order/arrestment is made against you, any distress, execution or other legal process is levied on any of your property or you take or suffer any similar action in any jurisdiction;
  - 10.1.7 appear reasonably to us due to your credit rating to be financially inadequate to meet your obligations under the Contract; and/or
  - 10.1.8 appear reasonably to us to be about to suffer any of the above events; then we shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 10.2 below.
- 10.2 If any of the events set out in clause 10.1 above occurs in relation to you then:-
  - 10.2.1 except where you are acting as a consumer we may enter, without prior notice, any of your premises (or premises of third parties with their consent) where Hire Goods may be and repossess any Hire Goods;
  - 10.2.2 we may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with you;
  - 10.2.3 we may immediately cancel, terminate and/or suspend without Liability to you the Contract and/or any other contract with you; and/or
  - 10.2.4 all monies owed by you to us shall immediately become due and payable.
- 10.3 Any repossession of the Hire Goods shall not affect our right to recover from you any monies due under the Contract and/or any damages in respect of any breach which occurred prior to repossession of the Hire Goods.
- 10.4 Upon termination of the Contract you shall immediately:
  - 10.4.1 return the Hire Goods to us or make the Hire Goods available for collection by us as requested by us; and
  - 10.4.2 pay to us all arrears for Rentals, charges for any Services, and/or any other sums payable under the Contract.

**11 Limitations of Liability**

- 11.1 \*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.
- 11.2 \*If we are found to be liable in respect of any loss or damage to your property the extent of our Liability will be limited to the retail cost of replacement of the damaged property.
- 11.3 Any defective Hire Goods must be returned to us for inspection if requested by us before we will have any Liability for defective Hire Goods.
- 11.4 \*We shall have no Liability to you if, without just cause, any monies due in respect of the Hire Goods and/or the Services has not been paid in full by the due date for payment.
- 11.5 We shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by your continued use of defective Hire Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to you.
- 11.6 You shall give us a reasonable opportunity to remedy any matter for which we are liable before you incur any costs and/or expenses in remedying the matter. If you do not do so we shall have no Liability to you.
- 11.7 \*We shall have no Liability to you to the extent that you are covered by any policy of insurance arranged as a result of the Contract and you shall ensure that your insurers waive any and all rights of subrogation they may have against us.
- 11.8 We shall have no Liability to you for any of the following losses (whether direct or indirect):-
  - 11.8.1 consequential losses (including loss of profits and/or damage to goodwill);
  - 11.8.2 economic and/or other similar losses;
  - 11.8.3 special damages and indirect losses; and/or

- 11.8.4 business interruption, loss of business, contracts and/or opportunity.
  - 11.9 \*Our total Liability to you under and/or arising out of any Contract shall not exceed 5 times the amount of the Rental and 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 us to you would be met by any insurance held by us then our Liability shall be extended to the extent that such Liability is met by such insurance.
  - 11.10 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:
    - 11.10.1 Liability for breach of contract;
    - 11.10.2 Liability in tort (including negligence); and
    - 11.10.3 Liability for breach of statutory and/or common law duty; except clause 11.9 above which shall apply once only in respect of all the said types of Liability.
  - 11.11 Nothing in this Contract shall exclude or limit our Liability for fraud, death or personal injury due to our negligence nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.
- 12 General**
- 12.1 Upon termination of the Contract the provisions of clauses 3.2, 3.4, 3.5, 6, 8.1, 8.2 and 8.3 shall continue in full force and effect.
  - 12.2 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.
  - 12.3 You shall be liable for the acts and/or omissions of your employees, agents, and/or subcontractors as though they were your own acts and/or omissions under this Contract.
  - 12.4 \*You agree to indemnify and keep indemnified us 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 us and arising from any breach of contract, any tortious/delictual act and/or omission and/or any breach of statutory duty by you.
  - 12.5 \*No waiver by us of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
  - 12.6 We shall have no Liability to you for any delay and/or non performance of a Contract to the extent that such delay is due to any Force Majeure event. If we are affected by any such event then time for performance shall be extended for a period equal to the period that such event delayed such performance.
  - 12.7 All third party rights are excluded and no third parties shall have any rights to enforce the Contract. This shall not apply to any finance company with whom we have an outstanding finance agreement relating to the Hire Goods. Such finance company shall, subject to our consent, have the right to enforce this Contract as if they were us. This Contract is governed by and interpreted in accordance with English law and we and you agree to submit to the non-exclusive jurisdiction of the English courts.
- 13 Additional Terms for Waste Disposal Services**
- These additional terms shall apply to the hire of any article of waste disposal, including skips, bins, bags or other waste receptacles:
- 13.1 You shall be responsible for obtaining all necessary licences and permissions for the placing of the Hire Goods on any public land or other land not owned by you. You shall comply with all conditions of any licence and maintain such licence until the Hire Goods are removed by us (or our agent or subcontractor). In the event that we obtain a licence for you, you shall be responsible for complying with and maintaining that licence.
  - 13.2 You shall ensure that adequate space is available for the delivery and collection of the Hire Goods. You shall not move the Hire Goods without our written permission.
  - 13.3 You shall place adequate cones around any Hire Goods on public land and will ensure it is well lit after dark so as to avoid damage or injury to third parties so far as possible.
  - 13.4 You shall ensure there is suitable access to the land on which the Hire Goods are to be placed and that the land is suitable to hold the Hire Goods when filled with waste and the vehicle delivering/collecting the Hire Goods. You shall ensure that all driveways and drains are adequately protected to prevent damage to them.
  - 13.5 You must comply with all instructions and guidance given to you (or contained on the Hire Goods) as to the types of waste, maximum weight and fill level for the relevant Hire Goods. You shall not place any hazardous waste (including asbestos, gypsum, liquid waste, fridges, tyres and batteries) in any Hire Goods, unless we have agreed to take such waste in writing in advance.
  - 13.6 You shall sign the waste transfer note declaring the type of waste, which will pass ownership of the waste to us (or our agent or subcontractor, as appropriate). You shall indemnify us, our agents and subcontractors against all cost and liabilities arising from the waste not being as described or agreed.
  - 13.7 No fires shall be lit in the Hire Goods nor shall any corrosive acid, noxious substance, liquid cement or concrete be placed in the Hire Goods.