

All words appearing in these terms and conditions and the Hire Schedule with capital letters shall bear the meanings indicated herein or as set out in the relevant Hire Schedule.

1. **Definitions:** In this Agreement the following terms shall, unless the context requires otherwise, have the following meaning:  
**Additional Charges:** means any sums payable in accordance with Clause 4.8 below and any damage payable upon termination or expiry (whichever is the earliest) of this Agreement.  
**Agreement:** means this Hire Contract with full maintenance and each and every related Hire Schedule(s) (as amended from time to time).  
**Briggs Standard Return Conditions:** means the Lessor's conditions upon which Equipment subject to this Agreement, must be returned to the Lessor by the Lessee on termination or expiry of this Agreement.  
**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.  
**Commencement Date:** means the date of execution of this Agreement by the Parties.  
**Contracted Annual Hours:** means the agreed annual hours of usage by the Lessee of the Equipment as set out in the Hire Schedule.  
**Consumables:** means any item(s) or part(s) which would reasonably be expected to require replacement through the normal operation of the Equipment, including but not limited to, light bulbs, wiper blades, tyres and forks.  
**Delivery:** the transfer of physical possession of the Equipment to the Lessee at the Site.  
**Due Date:** shall mean the date specified on each and every invoice by which payment is due.  
**Equipment:** means the asset(s) as set out in the Hire Schedule, the terms of hire of which are governed by this Agreement.  
**Excess Hours:** means the usage of the Equipment in excess of the Contracted Annual Hours as set out in the Hire Schedule.  
**Force Majeure Event:** means any circumstance not within a Party's reasonable control including, without limitation:
  - a. acts of God, flood, drought, earthquake or other natural disaster;
  - b. epidemic or pandemic;
  - c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations;
  - d. nuclear, chemical or biological contamination or sonic boom;
  - e. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - f. collapse of buildings, fire, explosion or accident; and
  - g. interruption or failure of utility service.  
**Hire Charges:** means the rentals payable for the hire of the Equipment and provision of maintenance as set out in the Hire Schedule subject to the terms and conditions of this Agreement. Hire Charges are subject to VAT at the applicable rate.  
**Hire Commencement Date:** means the date that the Lessee takes Delivery of the Equipment at the Site or the date detailed in the Hire Schedule.  
**Hire Schedule:** means the document giving full details of the Minimum Period, Hire Charges, Equipment, type of hire and other relevant details for each piece of Equipment hired under the terms of this Agreement.  
**LOLER:** Lifting Operations and Lifting Equipment Regulations 1998.  
**Minimum Period:** shall mean in relation to the Equipment, the shortest period of hiring specified as such in the Hire Schedule relating to such Equipment.  
**Parties/Party:** means the Lessor and/ or the Lessee.  
**Payment Deferred Period:** means a period of months as specified in the Hire Schedule when the Hire Charges shall not be payable.  
**Payment Terms:** means the period of time from the date of invoice from which the payment becomes due as detailed overleaf.  
**Rental Application Survey Report:** means an assessment undertaken by the Lessor and accepted by the Lessee of the application and Site conditions to which the Equipment shall be subject to.  
**Replacement Equipment:** means any Equipment supplied by way as a permanent or temporary replacement for Equipment hired under this Agreement.  
**Site:** means the physical location of the Equipment at the address specified in the Hire Schedule.  
**Specialist Equipment:** means any Equipment defined as Specialist Equipment in the relevant Hire Schedule.  
**Total Loss:** shall mean an actual or constructive total loss as a result of the Equipment (or any element of it) being lost, destroyed, stolen, confiscated, damaged beyond economic repair or otherwise rendered unfit for or unable to be used. The date of such Total Loss shall be the date of the loss, destruction, theft, confiscation or damage beyond economic repair or, if later, the date such is declared by insurers or otherwise adjudged by such insurers to be a total loss.
2. **EQUIPMENT HIRE**
  - 2.1 The Lessor shall hire the Equipment to the Lessee (for use at the Site) subject to the terms and conditions of this Agreement.
  - 2.2 The Lessor shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Lessee's quiet possession of the Equipment throughout the duration of this Agreement.
  - 2.3 The Lessee shall have no right to cancel the terms of this Agreement prior to Delivery of the Equipment. This Agreement shall be enforceable by either Party after the Commencement Date.
3. **MINIMUM PERIOD**
  - 3.1 The Minimum Period starts on the Hire Commencement Date and shall continue for the Minimum Period as detailed in the Hire Schedule, unless this Agreement is terminated earlier in accordance with its terms.
4. **HIRE CHARGES AND EXCESS HOURS**
  - 4.1 The Lessee shall pay the Hire Charges to the Lessor in accordance with the Payment Terms as set out overleaf and the Hire Schedule.
  - 4.2 The Hire Charge shall be fixed during the term of this Agreement subject to the provisions of this Clause 4.11.
  - 4.3 Subject to the Hire Schedule, the Lessee must establish and maintain a direct debit instruction for the Hire Charges during the term of this Agreement. If the Lessee cancels the direct debit instruction a monthly surcharge of 2% of the Hire Charge shall be applied to each invoice. The Hire Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee, at the rate and in the manner from time to time prescribed by law.
  - 4.4 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).
  - 4.5 If the Lessee fails to make any payment due to the Lessor under this Agreement by the Due Date for payment, then, without limiting the Lessor's remedies under this Agreement, the Lessee shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England'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 Lessee shall pay the interest together with the overdue amount.
  - 4.6 Payment of any sum payable under each Hire Schedule on or before the Due Date shall be of the essence and a condition of this Agreement.
  - 4.7 The Lessee acknowledges that its obligations to pay the Hire Charges and any Additional Charges due under this Agreement are absolute and unconditional, irrespective of any contingency whatsoever, including the failure or delay on the part of the Lessor to comply with its obligations relating to service and maintenance under this Agreement.
  - 4.8 Excess Hour management:
    - a. Every 12 calendar months during the Minimum Period starting at the end of the twelfth month from the Hire Commencement Date the Lessor upon reasonable assistance from the Lessee, shall record the number of hours of use of the Equipment and shall compare to the cumulative annual hours entitlement for the relevant period as specified in the Hire Schedule. The Lessor shall advise the Lessee if the hour usage exceeds the agreed Contracted Annual Hours as detailed in the Hire Schedule and upon agreement of both Parties, shall increase the Hire Charges (at the Lessor's discretion) and the Contracted Annual Hours to reflect the actual usage of the Equipment by the Lessee.
    - b. If the Lessee does not provide reasonable assistance to the Lessor to actively manage the Contracted Annual Hours to reduce the possibility of the Lessee going into Excess Hours, the Lessor shall charge any hours of use which exceed such Contracted Annual Hours which shall be due and payable (without demand) as Additional Charges at 1.5% of the then current Hire Charge, at the Due Date of the next applicable invoice or any invoice thereafter.
    - c. The Lessee shall observe the correct functioning of an hour meter affixed to the Equipment no less frequently than monthly and immediately report any non-functioning hour meter to the Lessor. If the hours of use data is not available for an item of Equipment, either because the hour meter affixed to the Equipment ceases to function or otherwise, then the number of hours for which the Equipment shall be deemed to have been used during such period shall be the average number of hours per day for which the Equipment has been used in the last period for which accurate readings are noted, or where 12 months has not yet elapsed from the Hire Commencement Date then the average number of hours per day for which the Equipment has been used during that part of the Minimum Period that has elapsed.
  - 4.9 In the event that the Lessor reasonably concludes that there has been a material alteration in the facts specified in the Rental Application Survey Report, or in the event of persistent non-compliance by the Lessee with the obligations set out in Clause 8 of this Agreement, the Lessor shall be entitled to increase the Hire Charges specified in the Hire Schedule by giving the Lessee not less than 14 days prior written notice by an amount reasonably assessed by the Lessor given the change in circumstances.
  - 4.10 At the end of the Minimum Period unless otherwise agreed in writing, the then current Hire Charge shall increase by 10%.
  - 4.11 On the first and each subsequent anniversary of the Hire Commencement Date, the Hire Charges for the succeeding 12 months shall be increased by the amount stated in RPIX Factor in the Hire Schedule (if applicable) multiplied by the annual points increase in the RPIX since the Hire Commencement Date of that Hire Schedule or the date of the last annual increase if later. For the purpose of this clause, the increase in the RPIX shall be defined as the increase between the latest index available Hire Commencement Date, and the latest available index at each anniversary.
5. **DELIVERY**
  - 5.1 Delivery of the Equipment shall be made by the Lessor. The Lessor shall use all reasonable endeavours to effect Delivery by the date and time proposed between the Parties.
  - 5.2 The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the Delivery of the Equipment. The Lessee's duly authorised representative shall sign a receipt confirming such acceptance of the physical delivery of the Equipment.
  - 5.3 Acceptance of Delivery shall be deemed 3 Business Days after Delivery and shall constitute conclusive evidence that the Lessee has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection).
  - 5.4 If the Lessee cannot accept Delivery of the Equipment on the agreed date and fails to notify the Lessor 48 Business Hours prior to the agreed delivery date, the Lessor shall charge failed delivery charges (at the then prevailing rate of the Lessor) to the Lessee and subsequent storage charges (at the then prevailing rate calculated on a daily basis) until the Lessee accepts Delivery of the Equipment.
6. **TITLE, RISK AND INSURANCE**
  - 6.1 The Equipment shall at all times remain the property of the Lessor, and the Lessee shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement).
  - 6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on Delivery. The Equipment shall remain at the sole risk of the Lessee during the Minimum Period and any further term during which the Equipment is in the possession, custody or control of the Lessee (Risk Period) until such time as the Equipment is collected by the Lessor. During the Minimum Period and the Risk Period, the Lessee 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 risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Lessor 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 the Lessor 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 the Lessor may from time to time consider reasonably necessary and advise to the Lessee.
  - 6.3 All insurance policies procured by the Lessee shall be endorsed to provide the Lessor with at least 20 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Lessor's request name the Lessor on the policies as a loss payee in relation to any claim relating to the Equipment. The Lessee shall be responsible for any deductibles due on any claims under such insurance policies.
  - 6.4 The Lessee shall give immediate written notice to the Lessor in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Lessee's possession or use of the Equipment.
  - 6.5 If the Lessee fails to effect or maintain any of the insurances required under this Agreement, the Lessor 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 Lessee.
  - 6.6 The Lessee shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Lessor and proof of premium payment to the Lessor to confirm their insurance arrangements.
7. **LESSOR RESPONSIBILITIES**
  - 7.1 To ensure the satisfactory performance of the Equipment, the Lessor or its representative undertakes to:
    - a. Carry out the routine servicing and inspection of the Equipment at such intervals as it shall reasonably determine including the adjustment and repair or replacement of any defective working parts where caused by standard operating fair wear and tear discovered, during maintenance or service work; and
    - b. Repair or replace any parts other than Consumables, except where in the Lessor's reasonable opinion the part has been worn or damaged due to the Lessee not taking reasonable care of the Equipment. The Lessor's decision shall be conclusive and binding on the Lessee and in this event, the cost of the repair shall be charged at the Lessor's then prevailing rate; and
    - c. Use all reasonable endeavours to supply spare or replacement components (other than Consumables) required to maintain the Equipment, using such components (whether service exchange parts or new parts) as the Lessor considers necessary.
  - 7.2 Where the Equipment has broken down by reason of the development of a latent defect or fair wear and tear, upon notification by the Lessee of such breakdown to the Lessor's service centre, the Lessor shall either (subject to the provisions of Clause 9.4):
    - i as soon as reasonably practicable repair the Equipment; or
    - ii if in its opinion it is impracticable to repair the Equipment within a reasonable period of time, it shall at its own expense provide to the Lessee Replacement Equipment until the replaced Equipment is repaired.
  - 7.3 The Replacement Equipment shall be as reasonably as practicable of the same capacity and general specification as the unrepairable Equipment provided by the Lessor. The Lessor shall not be obligated to provide Specialist Equipment, specialised attachments or accessories or make special alterations to the Replacement Equipment. In all respects the terms and conditions of this Agreement shall apply to the Replacement Equipment as if it were the Equipment.
  - 7.4 The maintenance to be provided by the Lessor under this Agreement shall be undertaken during normal working hours of 07:30 to 16:30 Monday to Friday other than Bank Holidays and Public Holidays. Work requested outside these hours shall be charged at the Lessor's then prevailing rates.
  - 7.5 Extent of Lessor's Maintenance Obligations:
    - a. The Lessor will not be responsible for any maintenance or servicing of the Equipment, or repair or replacement of parts necessary due to the Lessee's failure to comply fully with their duties under this Agreement, vandalism or theft, modifications or alterations to the Equipment or operation of the Equipment outside the terms of this Agreement.
    - b. The Lessee shall be responsible for any defects resulting from the Lessee's failure to comply with the terms of this Agreement. Any such defects shall be corrected by the Lessor at the sole cost and expense of the Lessee.
8. **LESSEE'S RESPONSIBILITIES**
  - 8.1 The Lessee shall during the term of this Agreement:
    - a. Ensure that the Equipment is kept and operated in a suitable environment as detailed in the Rental Application Survey Report, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Lessor;
    - b. Take such steps 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 set, used, cleaned or maintained by an operator;
    - c. Carry out at the Lessee's own expense routine daily maintenance and pre-shift operator checks of the Equipment in accordance with the manufacturer's recommendations and ensure that the Equipment is in a reasonable repair and working condition;
    - d. Be responsible for all fuel (if necessary), repair all punctures and replace at the Lessee's own expense damaged or worn tyres including those that could reasonably be regarded as needing replacement, such work must be undertaken by the Lessor or an approved supplier of the Lessor;
    - e. Maintain the batteries (where traction batteries are supplied) and the associated chargers in accordance with the manufacturer's recommendations, including installation, connection, charging, discharging and topping up;
    - f. Make no alteration to the Equipment and not remove any existing component(s) from the Equipment and keep the Lessor fully informed of all material matters relating to the Equipment;
    - g. Keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without the Lessor's prior written consent;
    - h. Permit the Lessor or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
    - i. Notify the Lessor's service centre of any failure or reduction in the performance of the Equipment or any damage to the Equipment as soon as reasonably possible, not attempt repairs without the Lessor's prior written consent and stop using the Equipment if further damage is likely to occur;
    - j. Not, without the prior written consent of the Lessor, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
    - k. Not without the prior written consent of the Lessor, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building, the Lessee shall repair and make good any damage caused by the affixation or removal of the Equipment from any such land or building and indemnify the Lessor against all losses, costs or expenses incurred as a result of such affixation or removal;
    - l. Not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Lessor in the Equipment and, where the Equipment has become affixed to any land or building, the Lessee must take all necessary steps to ensure that the Lessor may enter such land or building and recover the Equipment both during the term of this Agreement, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Lessor of any rights such person may have or acquire in the Equipment and a right for the Lessor to enter onto such land or building to remove the Equipment;
    - m. 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 so confiscated, seized or taken, the Lessee shall notify the Lessor and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Lessor on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
    - n. Not use the Equipment for any unlawful purpose;
    - o. Ensure the warranty documentation provided with the Equipment at the time of Delivery is completed and returned to the Lessor within 14 days of Delivery;
    - p. Not remove, alter or permit to be removed or altered any identification or registration numbers or marks on the Equipment;
    - q. Pay the cost of any excise duty necessary as a result of requiring the Equipment to be used on the public highway and the associated cost of Equipment registration plates and removal of plates upon termination;
    - r. Unless otherwise specified in the Hire Schedule, carry out statutory obligations through examination of the Equipment pursuant to Regulation 9 Lifting Operations and Lifting Equipment Regulations 1998 and provide all necessary documentation relating to such to the Lessor; and
    - s. Not do or permit to be done anything which could invalidate the insurances referred to in Clause 6.

- 8.2 The Lessee acknowledges that the Lessor 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 Lessee or its officers, employees, agents and contractors, and the Lessee undertakes to indemnify the Lessor on demand against the same, 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 Lessee to comply with the terms of this Agreement.
- 9. WARRANTIES, LIABILITY AND INDEMNITY**
- 9.1 Notwithstanding any other provisions of this Agreement, subject only to the following provisions of this Clause 9.1, the Lessor makes no representations or warranties with respect to any Equipment, goods or services, which are supplied on an 'as is' basis. Subject to the exclusions and limitations set out in this Clause 9.1 and elsewhere in this Agreement, the following specific warranties shall apply:
- 9.1.1 New Equipment is subject to and covered by standard warranties provided by the third-party manufacturer for a period of 12 months after delivery. Details of the Manufacturer's warranties and related conditions are available upon request (subject to the provisions of Clause 8.1 o).
- 9.1.2 The Lessor's only liability is to pass through the benefit of any such applicable manufacturer's warranties to the Lessee. Spare parts may be subject to and covered by standard warranties provided by the third-party manufacturer thereof. Where any services are provided, the Lessor's only liability shall be for the Lessor to re-perform, directly or indirectly, at its own cost and expense such services which were not performed in a professional and workmanlike manner in accordance with generally accepted industry standards as notified as such to the Lessor in writing by the Lessee within 30 days of the date of performance of the relevant services.
- 9.1.3 The Lessor warrants that the Equipment shall substantially conform to its specification (as made available by the Lessor), be of satisfactory quality and fit for any purpose held out by the Lessee and detailed in the Rental Application Survey Report.
- 9.2 The Lessor hereby excludes to the maximum extent permitted by law any and all customary, implied and statutory terms, conditions, warranties and representations with respect to the state, quality, description, performance or otherwise relating to Equipment, goods or services, including any regarding fitness for a particular purpose, satisfactory quality or non-infringement. Unless expressly agreed otherwise in writing the Lessor does not represent or warrant that any of the Equipment or goods will comply with any particular licensing, construction, health & safety or other legal requirements nor that any particular Equipment may be used on public highways and the Lessee shall be solely responsible for making any such assessments and determinations and for obtaining such third party professional advice as may be necessary in this respect.
- 9.3 The Lessor shall have no liability to perform any warranty or other obligations under this Agreement where the Lessee:
- Is in arrears of any payments due to the Lessor; or
  - Has not performed the Lessee's responsibilities or has not satisfied all the conditions relating to warranty or maintenance, as defined in this Agreement and the Lessor's written quotation. The Lessor may cancel, without liability, any applicable warranties where an Equipment serial number has been tampered with or in any way changed without the Lessor's prior written consent. Without prejudice to any separate service agreement between the Lessee and the Lessor which covers the relevant works, the Lessee shall be liable to pay the Lessor immediately on demand, at the Lessor's then current rates for any work and materials provided by the Lessor which do not qualify as a warranty claim as a consequence of the acts or omissions of the Lessee (the Lessor may inspect and test any items the subject of a warranty claim).
- 9.4 The Lessee shall not be entitled to any rebate of Hire Charges in respect of any period during which the Equipment for any reason whatsoever is unserviceable or out of order or unusable except where the Equipment breaks down due to a latent defect or fair wear and tear and in the Lessor's reasonable opinion it is impracticable to repair the Equipment and the Lessor is unable within a reasonable period of time to provide Replacement Equipment of similar capacity and general specification in such circumstances a full rebate of the Hire Charge on a pro-rata basis shall be made to the Lessee from the date the Equipment was deemed irreparable which shall be the Lessor's sole liability and the Lessee's sole remedy.
- 9.5 Subject only to Clauses 9.7 and 9.8 and without prejudice to any obligations under Clause 9 but otherwise notwithstanding any other provisions of this Agreement:
- The Lessor hereby excludes all liability of whatever nature and howsoever arising whether in contract (including fundamental breach), tort (including negligence) or under any other legal theories including but not limited to liability for any loss of any sort whatsoever suffered as a result of the Equipment or any other deliverables or any part thereof being unusable, out of order or unserviceable; and,
  - Neither Party shall be liable for
    - any loss of profit, loss of revenue, loss of savings, loss of goodwill, loss of reputation or loss of opportunity whether incurred directly or indirectly; nor
    - for any form of consequential, special or indirect loss or damage. The exclusions shall apply even if the relevant Party had been informed of or was aware that there was a serious possibility of such loss(es) arising.
- 9.6 The Lessor's total liability arising under or in connection with this Agreement whether in contract, tort or under any other legal theory or mechanism shall be limited as follows:
- in the case of damage to physical property, to £1,000,000 per event or series of related events and £2,000,000 in aggregate for any and all claims; and
  - in the case of any and all other liability, to the fees paid by the Lessee for the affected Equipment, goods and/or services during the 12 month period immediately preceding the date upon which the relevant cause of action first arose. The foregoing limitations shall apply in all circumstances and for any basis of claim including liability arising from the Lessor's or its agents, employees or sub-contractor's acts or omissions, including default, neglect or breach (including fundamental breach).
- 9.7 Notwithstanding any other provisions of this Agreement, the Lessor does not exclude or limit liability it may have for death or personal injury caused by its own negligence, fraud or for any other liability which cannot be excluded or limited as a matter of law.
- 9.8 The Lessor does not exclude liability for physical property damage caused by the negligence of the Lessor provided that such liability shall be limited in accordance with Clause 9.6.
- 10. LESSEE'S INDEMNITY**
- 10.1 The Lessee accepts sole responsibility for:
- Control and operation of the Equipment upon Delivery (including any acts or omissions of any operator); and
  - Any failure to perform adequately any of the Lessee's obligations under this Agreement.
- 10.2 Lessee shall indemnify and hold harmless the Lessor from and against all claims, liabilities, losses, damages, costs and expenses made or suffered by Lessor or any third parties for death or personal injury caused by the negligence of Lessee for which Lessor is legally liable.
- 10.3 Save to the extent of any legal liability the Lessor may have for death or personal injury caused by the negligence of the Lessor, the Lessee shall indemnify and hold harmless the Lessor from and against all claims, liabilities, losses, damages, costs and expenses made or suffered by Lessor, or by any third parties arising:
- Directly or indirectly out of the use, condition, modification, possession, sale, disposal or other disposition of the Equipment or other goods (including any fuel(s)); and
  - From any responsibilities assumed by the Lessee under this Agreement; and
  - For any breach of this Agreement by the Lessee except that the Lessee shall not be liable for any indirect or consequential losses; and
  - For all taxes (other than corporation tax on the Hire Charges) and other outgoings payable in connection with this Agreement or the Equipment or any location where the Equipment may from time to time be stored.
- 10.4 In the event of injury to persons or damage to property (including the Equipment) the Lessee shall immediately give notice in writing to the Lessor.
- 11. TERMINATION**
- 11.1 Without affecting any other right or remedy available to it, the Lessor may terminate this Agreement with immediate effect by giving written notice to the Lessee if:
- The Lessee fails to pay any amount due under this Agreement on the Due Date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
  - The Lessee commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - The Lessee repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
  - The Lessee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits liability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - The Lessee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
  - A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Lessee (being a company);
  - An application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Lessee (being a company);
  - There is a material change in the ownership of the Lessee;
  - The holder of a qualifying floating charge over the assets of the Lessee (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - A person becomes entitled to appoint a receiver over the assets of the Lessee or a receiver is appointed over the assets of the Lessee;
  - A creditor or encumbrancer of the Lessee 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 Lessee's assets and such attachment or process is not discharged within 14 days.
- 11.2 For the purposes of Clause 11.1 (b), 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 the Lessor would otherwise derive from:
- A substantial portion of this Agreement; or
  - 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 that item of Equipment.
- 11.4 The Lessor or Lessee may terminate this Agreement by providing 3 months prior written notice to the other Party ending at the end of the Minimum Period or any time thereafter.
- 12. CONSEQUENCES OF TERMINATION**
- 12.1 Upon termination of this Agreement, however caused:
- The Lessor's consent to the Lessee's possession of the Equipment shall terminate and the Lessor may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter the Site where the Equipment is located; and
  - Without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor on demand:
    - All Hire Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to Clause 4.5;
    - Any costs and expenses incurred by the Lessor in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport and legal costs);
    - The cost of repairs reasonably required in accordance with Clause 14.
- 12.2 Upon termination of this Agreement pursuant to Clause 11.1, any other repudiation of this Agreement by the Lessee which is accepted by the Lessor or pursuant to Clause 11.3, without prejudice to any other rights or remedies of the Lessor, the Lessee shall pay to the Lessor on demand a sum equal to the whole of the lease element of the Hire Charges that would (but for the termination) have been payable if the Agreement had continued from the date of such termination to the end of the Minimum Period, less a discount for accelerated payment at a rate of 3% per annum.
- 12.3 The sums payable pursuant to Clause 12.2 shall be agreed compensation for the Lessor's loss and shall be payable in addition to the sums payable pursuant to Clause 12.1(b).
- 12.4 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. TOTAL LOSS**
- 13.1 If the Equipment is subject to a Total Loss then the Lessee shall promptly notify the Lessor in writing. On the next date a Hire Charge is due following such Total Loss, or, if none, on the last day of the Minimum Period under the relevant Hire Schedule, the Lessee shall pay to the Lessor by way of an Additional Charge an amount equal to the following:
- All arrears of Hire Charges, interest and all other sums outstanding at the date of the Total Loss;
  - If a Total Loss is to occur due to the Lessee's negligence, all Hire Charges it would have been obliged to pay had the hiring continued for the remainder of the Minimum Period, the proportion of each Hire Charge of the lease element attributable to the hire of the Equipment discounted at the rate of 3% per annum to the date each Hire Charge would have fallen due to reflect early payment;
  - Any costs incurred by the Lessor in terminating or redeploying any funds borrowed or acquired by the Lessor to fund its investment in the Hire Charges and the Equipment; and
  - An amount equal to the greater of the estimated Fair Market Value at the end of the Minimum Period or the residual value of the Equipment assumed by the Lessor.
- 14. RETURN OF EQUIPMENT**
- 14.1 Upon termination the Lessor shall make arrangements with the Lessee to collect the Equipment, collection will be charged at the then prevailing rates of the Lessor.
- 14.2 The Lessee shall continue to accept full responsibility and liability, and abide to the terms of this Agreement until such time as the Equipment is collected by the Lessor.
- 14.3 The Lessee must return the Equipment in good condition, fair wear and tear excepted as defined in the Briggs Standard Return Conditions and in accordance with the Fair Wear and Tear guidelines as published by the Forklift Truck Association.
- 14.4 The Lessee will reimburse to Lessor on demand reasonable expenses incurred by the Lessor in the event of an aborted collection or incorrect collection instructions given by the Lessee.
- 14.5 The condition of the Equipment shall be inspected upon termination by a duly qualified representative of the Lessor. If the Lessee requires a representative to be present for the inspection the Lessor must be notified in writing prior to the return of the Equipment.
- 14.6 If the Equipment does not meet the standards identified in the Briggs Standard Return Conditions and in accordance with the Fair Wear and Tear guidelines as published by the Forklift Truck Association the following provisions shall apply:
- The Lessee will be notified in writing of the cost necessary to bring the Equipment to the required standard;
  - The Lessee shall be deemed to have agreed the costs unless the Lessor has received written notice to the contrary within three Business Days of the Lessor providing notice under Clause 14.6 a;
  - If the Lessor receives notice from the Lessee under Clause 14.6 b above the Lessor will keep the Equipment unrepaired until Agreement has been reached. In the event the Parties cannot agree, the matter will be referred to a nominee of the President of the Institute of Plant Engineers (or any successor body) to determine the work required and its cost, such nominee shall act as an expert not an arbitrator and his decision shall be final and binding.
- 15. FORCE MAJEURE**
- 15.1 If a Force Majeure Event occurs neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement 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. If the period of delay or non-performance continues for 3 months, the Party not affected may terminate any Hire Schedule subject to this Agreement which is affected by the Force Majeure Event by giving 30 days written notice to the affected Party.
- 16. NOTICES**
- 16.1 Any notice required to be given under or in connection to this Agreement shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally, or by sending it by pre-paid first class post or recorded delivery to the address specified in the Hire Schedule.
- 17. ASSIGNMENT**
- 17.1 The Lessee shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Lessor.
- 17.2 All rights and benefits of the Lessor under this Agreement and/or property in the Equipment may be assigned, transferred, charged, pledged or otherwise disposed of either in whole or part by the Lessor without the consent of the Lessee.
- 18. THIRD PARTY RIGHTS**
- 18.1 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 (Act) by a person who is not a party to this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under this Act.
- 19. GENERAL**
- 19.1 Each Hire Schedule shall be deemed to incorporate the terms of this Agreement and shall constitute a separate hire contract of the Equipment. References to this Agreement shall where the context requires include such hire contract.
- 19.2 The rights of the Lessor under this Agreement shall not be prejudiced by any neglect indulgence or forbearance in enforcing any of its terms and no waiver of any default by the Lessee shall operate as a waiver of any subsequent default by the Lessee.
- 19.3 The rights of the Lessor under this Agreement will not be affected if the Lessor does not enforce, or the Lessor delays enforcing any of the terms of this Agreement.
- 19.4 Each party undertakes that it shall not at any time during this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 20. VARIATION**
- 20.1 No variation of this Agreement shall have any effect unless confirmed in writing and executed by the Lessor and Lessee.
- 20.2 No amendments by manuscript shall be valid.
- 21. NO PARTNERSHIP OR AGENCY**
- 21.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 21.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 22. SEVERANCE**
- 22.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

22.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 23. SET OFF

23.1 If any monies are payable to the Lessee under this Agreement by the Lessor, the Lessor may withhold from those monies an amount equal to the total monies the Lessee owes the Lessor under this or any other agreement.

#### 24. THE USE OF INFORMATION

24.1 Fraud and Money Laundering Prevention. The Lessee shall give the Lessor accurate and complete information both Parties prior to and during the term of this Agreement which the Lessor shall check with fraud prevention agencies. If the Lessee provides the Lessor with false or inaccurate information and/or the Lessor suspect's fraud, the Lessor will record the findings and may report it to the Serious Organised Crime Agency.

24.2 Credit check. The Lessor shall conduct a credit check prior to commencement of the Agreement. Credit reference agencies may share with other organisations credit searches and other information about the Lessee and those financially associated with the Lessee. Those other organisations may use the information to help make decisions about credit worthiness of the Lessee. If the Lessee defaults on this Agreement and does not repay the Hire Charges in full and on time, the Lessor may contact the credit reference agencies who may record the outstanding debt.

24.3 In accordance with the General Data Protection Regulation (EU) 2016/679 of 27 April 2016 ("GDPR"), we inform you the personal data provided in the framework of the Agreement and the information obtained from credit reference agencies and fraud prevention agencies will be stored in files held by Briggs Equipment UK Ltd, with registered address at Orbital 7, Orbital Way, Cannock, WS11 8XW. The personal data will be processed for (i) the purposes of managing your relationship with Briggs Equipment UK Ltd and the execution of the Agreement (ii) to ensure that Briggs Equipment complies with its legal obligations as Lessor and (iii) for marketing activities and to provide you information of products and services of Briggs Equipment UK Ltd. The legal basis for justifying the processing of the personal data by Briggs Equipment UK Ltd, are the compliance with its legal obligations, the execution of the Agreement, your consent as necessary, such as in case of the processing activities referred in the previous point (iii) below and the Briggs Equipment UK Ltd 's interest of managing its activity.

According to the GDPR, you are hereby informed of the possibility of exercising your rights of access, rectification, cancellation, portability, limitation and opposition of your personal data before Briggs Equipment UK Ltd sending an email to the following address [dpo@briggequipment.co.uk](mailto:dpo@briggequipment.co.uk).

Your personal data will be processed as long as you continue your relationship with the Briggs Equipment UK Ltd, and once the relationship with Briggs Equipment UK Ltd ceases, while legal responsibilities for parties could arise. The personal data processing for marketing activities will be processed until you tell us otherwise. In this regards we inform you that you can revoke the consent for marketing activities at any time by sending an email to [dpo@briggequipment.co.uk](mailto:dpo@briggequipment.co.uk).

Your personal data will only be transferred to other entities within Briggs Equipment UK Ltd Group and to third parties such as authorities and official bodies to ensure the compliance with the applicable legal obligations and when necessary for the execution of the Agreement. Third party companies which provide services to Briggs Equipment UK Ltd will be able to access to your personal as data processors. The personal data will not be transferred to third countries outside the EEC.

You can contact with our Data Protection Officer by email at [dpo@briggequipment.co.uk](mailto:dpo@briggequipment.co.uk) or in writing to Orbital 7, Orbital Way, Cannock, WS11 8XW.

Should you have any reason to believe that your rights have not been properly addressed, you can file a complaint before the Information Commissioner's Office at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

#### 25. ENTIRE AGREEMENT

25.1 This Agreement is comprised of these terms and conditions and the relevant Hire Schedules. This Agreement shall constitute the entire and exclusive Agreement between the Parties to the exclusion of any other terms and conditions and documentation, including but not limited to the Lessee's purchase order or other quotation or acknowledgement documentation. The Lessee confirms they have not placed any reliance on any representation or statements other than those set forth in this Agreement. It is expressly implicit and agreed that no provisions, terms, warranties, conditions, guarantees or obligations whatsoever (whether made negligently or innocently) either expressed or implied other than as set forth in this Agreement shall be binding on either Party.

#### 26. GOVERNING LAW

26.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

#### 27. JURISDICTION

27.1 Each Party irrevocably agrees that the courts of England and Wales shall have jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).