

DW Hire Solutions Limited Terms & Conditions

DW HIRE SOLUTIONS TERMS & CONDITIONS

1. INTERPRETATION & MEANINGS

- 1.1 The following words should be interpreted as follows:
- 1.2 **'Contract'** means a contract incorporating these conditions made between the Supplier and the Customer for the hire of Hire Goods or the sale of Products.
- 1.3 **'Supplier'** means DW Hire Solutions, its employees, servants, agents or properly authorised representatives.
- 1.4 **'Customer'** means the individual, firm, partnership, company, or any other organisation or legal entity hiring the Hire Goods or buying the Products or Services.
- 1.5 **'Hire Goods'** means any piece of equipment, along with any accessories set out in the Contract, hired out to the Customer.
- 1.6 **'Hire Period'** means the period starting when the Customer holds on hire the Hire Goods and finishing when the Hire Goods are returned to the Supplier's possession or collected by the Supplier.
- 1.7 **'Services'** means the services which the Supplier carries out for the Customer in association with the hire of the Hire Goods. This will include the delivery/collection of the Hire Goods.
- 1.8 **'Products'** means the products sold by the Supplier to the Customer.
- 1.9 **'Rental'** means the prevailing rate, which the Supplier will charge for the hire of the Hire Goods, as set out in the Supplier's price list.
- 1.10 **'Deposit'** means a payment in advance to the Supplier to be kept as security by the Supplier while the Hire Goods are on hire.
- 1.11 **'Liability'** means liability for any damages, claims, actions, proceedings, awards, costs or any other loss or expense.
- 1.12 **'Force Majeure'** means any happening which is outside the reasonable control of a party such as acts of god, riots, civil unrest, terrorism, fire, flood, industrial action etc.

2. THE BASIS OF THE CONTRACT

- 2.1 Hire Goods are offered for hire subject to availability at the required time. The Supplier cannot be held liable for any loss to the Customer caused by the Hire Goods not being available due to Events beyond the control of the Supplier.
- 2.2 If the customer is hiring the Hire Goods as an individual and not in the course of his or her business, the hire would be covered by the Consumer Credit Act 1974, the Hire Period should not be longer than three months, whereupon the Contract will be deemed to have terminated. On this basis Hire Goods are not hired under cover of the above mentioned act.
- 2.3 No part of this contract shall exclude or reduce the Customer's statutory rights which may be excluded or reduced due to the Customer acting as a consumer. If the Customer is acting as a consumer any provision marked with an asterisk (*) may, subject to the Court's decision, have no effect. The Customer should consult his/her local Trading Standards or Citizen Advice Bureau.

3. PAYMENT

- 3.1 The Supplier's hire rates are set out in their current price list. These rates will prevail unless agreed otherwise in writing. The prices of any consumables or accessories, delivery and collection charges etc. will be noted on the Contract prior to the start of the hire.
- 3.2 The Customer shall pay all charges becoming due during the hire as agreed. VAT will be charged at the appropriate rates.
- 3.3 Payment will not be complete until cash has been paid or cheques have cleared.
- 3.4 Late payment will attract interest at 4% over the Supplier's bank's current base rate, both before and after judgment.
- 3.5 The Customer will pay all monies due to the Supplier under this Contract without deduction, counterclaim, set-off or any other withholding of monies.
- 3.6 The Supplier will set a reasonable credit limit for Account Customers. The Supplier may terminate the Contract if this credit limit is exceeded.

4. OWNERSHIP, RISK & INSURANCE

- 4.1 Risk in the Hire Goods and Products will pass to the Customer as soon as they leave the possession of the Supplier.
- 4.2 Risk in the Hire Goods will not pass back to the Supplier until they are back in the physical possession of the Supplier. This will apply even if the Supplier has agreed to cease charging the rental.
- 4.3 The Supplier always retains ownership of the Hire Goods. At no point does the Customer acquire any title, right or interest in the Hire Goods. Ownership of any Products will not pass to the Consumer until paid for in full and cleared.
- 4.4 The Customer must not pass the Hire Goods to any third party without the written agreement of the Supplier.
- 4.5 It is the responsibility of the Customer to fully insure Hire Goods and Products. The Supplier may require sight of the Customer's insurances. The Customer must hold the proceeds of any such insurance in trust for the Supplier and pass it to the Supplier on request. The Customer must not compromise any claim relating to the Hire Goods or associated insurance without the prior written consent of the Supplier.

5. DELIVERY & COLLECTION

- 5.1 Unless agreed otherwise in writing it is the Customer's responsibility to collect Hire Goods from the Supplier and to return the same to the Supplier when the Hire Period ceases. Any delivery or collection carried out by the Supplier will be chargeable, and will be part of the Services.
- 5.2 When the Supplier carries out such Services the person or persons performing them are servants of the Customer. As soon as the Customer instructs such persons they are then under the control of the Customer. The Customer will take sole responsibility for any such instruction or guidance he or she gives to any such person. Similarly the Customer will be responsible for any damage or loss resulting from following the Customer's instruction or guidance, except where the person carrying out the Services is negligent.
- 5.3 The Customer will be responsible for providing safe access to and from the site, and for providing safe loading and unloading facilities for the Supplier's servants.
- 5.4 The Customer will be liable to pay a reasonable charge to the Supplier for any loss due to the Customer's failure to provide safe access to the site. This will not apply if the Customer is acting as a consumer and failure to provide safe access is caused by a Force Majeure event.

6. CUSTOMER DUTIES TO CARE FOR HIRE GOODS

- 6.1 The Customer must only use the Hire Goods as specified in the operating instructions issued by the Supplier.
- 6.2 The Customer must inform the Supplier if the Hire Goods show any sign of failing.
- 6.3 The Customer must take sufficient and appropriate steps to protect the Hire Goods from damage, theft, etc.
- 6.4 The Customer must inform the Supplier if the Hire Goods are moved to a new location.

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- 6.5 The Customer must arrange for the Supplier to have access to any location to inspect the Hire Goods at any reasonable hour.
- 6.6 The Customer must always keep the Hire Goods in his or her possession and control. The Hire Goods must not be taken outside the UK unless agreed in writing.
- 6.7 The Customer must carry out any reasonable testing of the Hire Goods which may be required by law or specified in the Supplier's operating instructions, unless agreed otherwise in writing.
- 6.8 The Customer must not carry out any act, or fail to carry out any act, which may invalidate any insurance policy relating to the Hire Goods.
- 6.9 If the Hire Goods show any sign of failing or suffer any damage the Customer must cease to use the Hire Goods immediately, and inform the Supplier of the problem. The Customer must inform the Supplier immediately if there is an accident involving personal injury or damage to property.
- 6.10 The Customer must ensure that only the correct fuels, oil, lubrication are used. The Customer must ensure that the electricity on site is correct for the Hire Goods and that any necessary electrical wiring is carried out by a properly qualified person.
- 6.11 The Customer must return the Hire Goods to the Supplier in good and clean condition. Hire Goods collected by the Supplier's servants will be inspected when returned to the Supplier's workshops and the Customer will be notified of, and charged for any damage or missing parts. Reasonable charges will be made if Hire Goods are returned in a dirty condition.
- 7. MECHANICAL, ELECTRICAL FAILURE OR BREAKDOWN**
- 7.1 The Supplier will make an allowance to the Customer should the Hire Goods fail during the Hire Period so long as the Customer has not contributed to such failure, and has informed the Supplier immediately of the breakdown.
- 7.2 The Customer is responsible for any losses or expense caused to the Supplier where any breakdown of the Hire Goods is caused by the Customer's negligence or misuse.
- 7.3 The cost of any routine maintenance or repairs needed due to fair wear and tear and similar will be borne by the Supplier. The cost of any repair due to the Customer's negligence or misuse of the Hire Goods will be borne by the Customer.
- 7.4 The Customer must never attempt to repair the Hire Goods.
- 8. DAMAGE/THEFT/LOSS OF HIRE GOODS**
- 8.1 The Customer must pay the Supplier for Hire Goods returned damaged or dirty, and will be liable for ongoing hire charges until the Hire Goods are repaired and ready for hire.
- 8.2 The Customer must pay the Supplier the costs of replacing Hire Goods which are not returned to the Supplier or which are returned damaged beyond economic repair.
- 8.3 The Customer must pay the Supplier the Rental charges right up to the time of notification to the Supplier that the Hire Goods have been stolen, lost or damaged beyond economical repair. From the date of such notification until the Supplier has replaced these Hire Goods, the Customer must pay to the Supplier, as a genuine pre-estimate of lost Rental profit, a sum as liquidated damages being equal to 66% of the Rental that would otherwise have been payable for that period of time. The Supplier must act diligently to replace such Hire Goods as soon as possible using the payment made by the Customer in Clause 8.2 above.
- 9. TERMINATION OF THE CONTRACT BY NOTICE**
- 9.1 If the Hire Period is of fixed duration, subject to the provisions set out in Clause 10, the contract cannot be terminated by either party before the fixed duration expires, unless both parties so agree.
- 9.2 Where the Hire Period is not of fixed duration the Contract may be terminated by either party giving the other the period of notice which has been agreed.
- 9.3 If a period of notice has not been agreed nor specified the Customer may terminate the Hire Period by returning the Hire Goods to the Supplier, and the Supplier will have the right to terminate the hire of the Hire Goods by giving at least two weeks' notice to the Customer.
- 10. DEFAULT BY CUSTOMER**
- 10.1 If the Customer;
- 10.1.1 fails to pay to the Supplier any due amount without good reason;
- 10.1.2 breaches the terms of the Contract and, if such breach can be remedied, but has not been remedied in two weeks of receipt of notice requiring the breach to be remedied;
- 10.1.3 Makes repeated breaches of the Contract;
- 10.1.4 gives information which is incorrect, significantly inaccurate or which might mislead in relation to the Contract;
- 10.1.5 creates any form of charge, pledge or security over the Hire Goods, or ceases or threatens to cease business, or makes proposals to compound with his/her creditors, seeks an interim moratorium relating to claims or other proceedings, any distress, execution or any other process is levied on any goods belonging to the Customer. Is presented with a Petition of Bankruptcy or the Customer should take or suffer a similar action in any jurisdiction;
- 10.1.6 as a company, enters into any form of liquidation, has a receiver or similar appointed over any of its assets, any attachment order is made against it, any distress execution or similar process is levied on any of the Customer's assets, or any such action is taken by or against the Customer in any jurisdiction;
- 10.1.7 appears to the Supplier due to the Customer's credit rating to be unlikely to be able to pay monies due under the Contract;
- 10.1.8 appears to the Supplier to be likely to do any of the above:
- the Supplier will then have the right to pursue any of the rights set out below in Clause 10.2 without prejudice to other rights of action.
- 10.2 If any event referred to in Clause 10.1 above should materialize to the Customer then;
- 10.2.1 with the exception where the Customer acts as a consumer, the Supplier will have the right to enter the Customer's premises without notice, or the premises of any third party with their consent, to recover any Hire Goods which may be there;
- 10.2.2 the Supplier may refuse to carry out any Services under any Contract with the Customer; 10.2.3 the Supplier can terminate any Contract with the Customer without any Liability to the Customer;
- 10.2.4 *all sums due to the Supplier by the Customer will become payable immediately.
- 10.3 If the Supplier repossesses the Hire Goods, he will still have the right to pursue the Customer for any sum due under the Contract and for any damages relating to any breach preceding the repossession of the Hire Goods.
- 10.4 Where the Contract is terminated the Customer must immediately:
- 10.4.1 return to the Supplier all Hire Goods;

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10.4.2 pay to the Supplier all sums payable under the Contract.

11. LIMITATION OF LIABILITY

- 11.1 *The Supplier excludes as far as the law allows all representations, conditions and duties implied by law in relation to quality, sufficiency or fitness for purpose.
- 11.2 *If the Supplier finds itself liable for any damage or loss to the property of the Customer, then the Supplier's liability will be limited to the retail cost of replacing the property damaged.
- 11.3 If requested by the Supplier, any faulty Hire Goods must be returned to the Supplier for examination before the Supplier has any liability for the goods.
- 11.4 *If the Supplier has not been fully paid, when payment is due, for the Hire Goods, then the Supplier will have no liability to the Customer. This will not apply if the Customer has good reason not to pay for the goods.
- 11.5 The Supplier will not be liable for any extra damage, loss, claim etc. which occurs after a fault develops if the fault is known, or should have been apparent, to the Customer or his agent.
- 11.6 The Customer must not incur any costs to remedy any such matter without first giving the Supplier a reasonable chance to effect a remedy. The Supplier will not be liable to the Customer if the Customer should fail to do this.
- 11.7 *The Supplier will not be liable to the Customer where the Customer has the benefit of any insurance taken out for the Contract. The Customer must make sure that the insurers waive all rights of subrogation they may have against the Supplier.
- 11.8 The Supplier will not be liable to the Customer for any of the following:
- 11.8.1 *consequential losses of any type;
 - 11.8.2 economic losses or similar;
 - 11.8.3 indirect losses or special damages;
 - 11.8.4 interruption or loss of business, contracts, etc.
- 11.9 *The Supplier's maximum liability to the Customer under or relating to any Contract will not be more than five times the charges for Rental and Services under the said Contract or £1000, whichever is the greater. Where the Supplier's liability would be covered by the Supplier's insurance, the Supplier's liability will be increased to the extent of such insurance.
- 11.10 Each of these limitations and exclusions in this contract will be deemed to be repeated and will apply as separate provisions for
- 11.10.1 Liability for breach of contract;
 - 11.10.2 *Liability for tort and including negligence;
 - 11.10.3 *Liability for any breach of duty either Statutory or common law with the exception of clause 11.9, which will only apply once in relation to all the above Kinds of Liability.
- 11.11 No clause in this Contract excludes or reduces the Supplier's liability for injury to persons or death which is due to the negligence of the Supplier. No clause excludes or reduces any type of liability which the law does not permit to be excluded or reduced.

12. GENERAL TERMS

- 12.1 The provisions of clauses 3.2, 3.4, 3.5, 8.1, 8.2, 8.3 and Section 6 will remain in full force when the Contract terminates.
- 12.2 The hire of any item of Hire Goods will each form a Contract separate from all other Contracts for other Hire Goods.
- 12.3 The Supplier will hold the Customer liable for any actions or failures of the Customer's employees, agents, subcontractors or similar as if such actions or failures were the Customer's own.
- 12.4 *The Customer must indemnify, and continue to indemnify, the Supplier for any loss, expense, all legal costs plus any other loss etc. caused to the Supplier by the Customer's breach of contract, tort, or any breach etc. of the Customer's Statutory duty.
- 12.5 *The Supplier's waiver of any breach of the Contract shall not imply a waiver to any further breach of the same or any other clause. Should a court (or similar) hold any provision or part thereof, to be unenforceable, then this will not affect the force of the rest of the said provision nor other provisions of the Contract, which will remain fully effective.
- 12.6 The Customer will have no claim against the Supplier for any delay or failure to perform where this is due to Force Majeure events. Where such an event to occur, then the Supplier is entitled to a period of time, equal to that caused by the delay, to complete his performance.
- 12.7 No third party will have any right to enforce the Contract. Third party rights of any kind are specifically excluded. This Contract is governed by and interpreted in accordance with English Law and parties agree to submit to the non-exclusive jurisdiction of the English courts.