

JDE's Terms and Conditions for the supply of Products and/or Services

These terms and conditions apply if you request the provision of and/or acquire products or services or other deliveries of any kind from us by means of the execution of an agreement, a purchase order or by our performance in accordance with your request. The applicability of your general terms and conditions is rejected. Unless explicitly agreed otherwise these terms also apply to any subsequent agreement concluded between you and us.

1. Definitions

1.1. The following definitions apply in this Contract:

"Additional Services" means any Emergency Maintenance performed by us under this Contract;

"Additional Services Charges" means the charges payable in consideration of any Additional Services, which shall be calculated at the Additional Services Rate;

"Additional Services Rates" means the rates set out in the Headline Terms, as those rates are amended from time to time in accordance with the terms of this Contract;

"Associated Companies" means the companies associated with you as defined in section 256 Companies Act 2006 and any replacement or amending provisions;

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

"Buying Group" has the meaning defined in paragraph 2.11;

"Contract" means any contract for the supply of Products and/or Services (as applicable) between us and you, formed as set out in paragraph 2;

"Planned Maintenance" means the routine servicing of the Maintained Equipment; and replacing any parts or components as part of such routine servicing, in accordance with paragraph 9.1.2;

"Delivery" means delivery of Products at the Site(s) or in the case of Equipment, the date of first installation at the Site(s);

"Deposit" means the deposit amount set out in the Headline Terms;

"EDI" means our electronic data interchange;

"Emergency Maintenance" means making any unscheduled repairs to the Maintained Equipment; and replacing any parts or components of the Maintained Equipment, required to restore the Maintained Equipment to Good Working Order in accordance with paragraph 9.1.3;

"Equipment" means Rental Equipment and/or Purchase Equipment (as applicable);

"Excluded Maintenance" means the types of maintenance described in paragraph 9.4;

"Force Majeure Event" means events, circumstances or causes beyond the reasonable control of either of us;

"Framework Agreement" has the meaning defined in paragraph 2.11;

"Free on Loan Basis" means an arrangement under which Rental Equipment is hired by us to you without any Hire Charges being due, subject to certain conditions agreed in writing by us;

"Good Working Order" means the Maintained Equipment operates in accordance with the Operating Manuals;

"Headline Terms" means the Headline Terms attached to this Contract and signed by the Parties.

"Hire Charges" means the payments made by you or on your behalf for hire of the Rental Equipment;

"Hire Period" means the period of hire as set out in the Headline Terms or any other period of hire as may be agreed by the parties in writing;

"Intellectual Property Rights" means all intellectual property rights subsisting in relation to the Products and their packaging, and the Services including but not limited

to patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Maintained Equipment" means the Equipment specified in the Headline Terms to receive Maintenance Services;

"Maintenance Charges" means the Standard Maintenance Charges and the Additional Services Charges together;

"Maintenance Period" means the time period during which the Maintenance Services and Additional Services (if applicable) will be provided, as specified in the Headline Terms;

"Maintenance Services" means Planned Maintenance and Emergency Maintenance of the Maintained Equipment;

"Minimum Binding Amount" means such quantities of the Products for each Year of this Contract as agreed in writing by us. For the avoidance of doubt, the first Year's quantities are specified in the Headline Terms;

"Minimum Order Volume" means such minimum quantities of the Products required to receive an Order as stated in the Headline Terms;

"Normal Business Hours" means 8.00 am to 5.00 pm GMT on a Business Day;

"Operating Manuals" means all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment;

"Order" means an order to purchase the Products and/or Services (as applicable) submitted by you in accordance with the Headline Terms, paragraph 2 and via EDI or by email, telephone or fax;

"Purchase Option" means your option to purchase the Rental Equipment as more fully described in paragraph 8;

"Purchase Option Price" means the price of the Purchase Option as may be agreed by the parties in writing.

"Party" or **"Parties"** means you and us, each a Party and together the Parties;

"Products" means products and Equipment, we have supplied to you, in accordance with an Order placed by you;

"Purchase Equipment" means the beverage dispenser(s) and associated equipment, all substitutions, replacements or renewals of such equipment and all related accessories, manuals, and instructions purchased by you in accordance with an Order placed by you;

"Purchase Price" means the price of the Products (other than Rental Equipment) in our price list (available from us on request) in force on the proposed Delivery date_or, in respect of products not included on our price list, as otherwise notified in writing to you, and any VAT thereon;

"Rental Equipment" means the beverage dispenser(s) and/or associated equipment, all substitutions, replacements or renewals of such equipment and all related accessories, manuals, and instructions rented to you in accordance with an Order placed by you;

"Response Time" means within twenty-four (24) hours of a job number being provided to you by us following your notification of an Emergency Maintenance request;

"Services" means Maintenance Services and/or Additional Services;

"Site" means the address(es) for delivery of the Products and/or Services as set out in the Order or as otherwise agreed in writing by us;

“Standard Maintenance Charges” means the charges payable by you for the provision of Maintenance Services, as set out in the Order, as these charges are varied from time to time in accordance with the terms of this Contract.

“Technicians” means our employees, contractors, agents or other authorised representatives who shall provide the Services;

“VAT” means value added tax chargeable under the Value Added Tax Act 1994 or such replacement legislation in force at the relevant time;

“we”, “us”, or “our” means Jacobs Douwe Egberts GB Ltd, Horizon, Honey Lane, Hurley, Maidenhead, Berkshire, SL6 6RJ, United Kingdom (Company No. 00999990);

“Year” means the period of twelve (12) months from the date of Delivery of the first Order and each consecutive period of twelve (12) months thereafter;

“you” or “your” means the person, firm, company or other entity entering into this Contract with us.

2. Orders and Pricing

- 2.1. Each Order shall be deemed to be an offer by you to purchase the Products (other than Rental Equipment) and/or rent the Rental Equipment and/or receive the Services (as applicable) subject to both this Contract and any amendments to your offer which we tell you in writing. A Contract will be formed upon despatch of the Products (including any Rental Equipment, if applicable) by us or delivery of the Services (as applicable). You may only cancel an order by giving notice in writing not less than twenty-four (24) hours before the proposed Delivery date.
- 2.2. We shall not be obliged to deliver an Order unless the Minimum Order Volume is met.
- 2.3. The quantity of the Products shall be as set out in the Order.
- 2.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on our part.
- 2.5. We may make any changes in the specification of the Products which are required to conform with any applicable legislation or, which we consider does not materially affect their quality or performance. Where we are not the manufacturer of the Products, we shall use reasonable endeavours to transfer to you the benefit of any warranty or guarantee the manufacturer gives to us.
- 2.6. We do not operate a sale or return policy. It is your responsibility to ensure that stock is properly rotated.
- 2.7. We may make such alterations to Products and/or packaging as circumstances may demand.
- 2.8. Unless otherwise agreed in writing, we may vary any price in our price list upon at least 30 days prior written notice. Any price list provided by EDI shall be for guidance only and may contain discrepancies. It does not represent an offer to sell at the stated price. Our price lists, in whatever format, are confidential and should not be disclosed by you to any third party.
- 2.9. Where we provide you with a recommended resale price (RRP or RRSP) or recommended promotional resale price, these are simply recommendations and you have complete discretion to set your resale price at whatever level you wish.
- 2.10. We may agree in writing with you on an annual basis, discounts on the Purchase Price and/or rebates of payments which you have made to us. Unless otherwise agreed, for the first Year, these are stated in the Headline Terms. In the absence

of any agreement in subsequent Years, no discount or rebates will apply.

- 2.11. From time to time we may agree a framework agreement (“Framework Agreement”) with a specific organisation or group under which we will make available certain discounts on the Purchase Price or Hire Charges or Maintenance Charges to some or all the members of such organisation or group (with each such organisation or group being referred to as a “Buying Group”). However, where you are a member of any such Buying Group and you purchase Products, rent Rental Equipment or receive Services (as applicable) directly from us in your own name and not as a member of such Buying Group, then the provisions of this Contract (and any Purchase Price or Hire Charges or Maintenance Charges or Additional Service Charges herein) shall prevail over the provisions of any such Framework Agreement.

3. Rental Equipment

- 3.1. We shall hire the Rental Equipment to you for use at the Site(s) subject to the terms and conditions of this Contract.
- 3.2. The Hire Period starts on the date that you take Delivery of the Rental Equipment, and shall continue for the period identified in the Order unless this Contract is terminated earlier in accordance with its terms. In the event multiple Rental Equipment is hired, the Hire Period shall start on the date the first Rental Equipment is Delivered.
- 3.3. No Hire Charges shall be due in respect of Rental Equipment which is hired to you on a Free On Loan Basis, provided you purchase the Minimum Binding Amount for each Year (or meet such other conditions as are agreed in writing between us). If you fail to purchase the applicable Minimum Binding Amount in any Year (or fail to meet such other conditions as are agreed in writing between us), then, at our sole discretion, Hire Charges in respect of such Rental Equipment shall become due for the Hire Period in which the Minimum Binding Amount was not achieved and/or for the remainder of the Hire Period.
- 3.4. The Deposit is a deposit against default by you of payment of any Hire Charges or any loss of or damage caused to the Rental Equipment and is payable on or before the date that you take Delivery of the Rental Equipment. If you fail to pay any Hire Charges in accordance with the Order, or cause any loss or damage to the Rental Equipment (in whole or in part), we shall be entitled to apply the Deposit against such default, loss or damage. The Deposit (or balance thereof) shall be refundable within ten (10) Business Days of the end of the Hire Period.

4. Forecasting

- 4.1. Unless otherwise agreed, you will provide an annual and rolling monthly forecast of your requirements for Products.
- 4.2. Unless otherwise agreed, you will fully compensate us for any costs incurred as a result of any forecasting error over or under 20% which you make in relation to the Products, though we shall make reasonable endeavours to minimise such costs.

5. Payment Terms and Settlement

- 5.1. Unless otherwise agreed in writing, all invoices are due for payment immediately upon Delivery and payable in cleared funds by the due date.

- 5.2. If we tell you in writing that a prompt settlement discount is to be applied to your account, this discount will only be applied to invoices which you have paid in full in cleared funds before the due date. We can vary, re-charge or withdraw this discount at any time by notice in writing.
- 5.3. All invoiced amounts are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by you at the rate and in the manner from time to time prescribed by law.
- 5.4. All invoiced amounts under this Contract shall, unless otherwise agreed in writing, be paid in full without any set-off, counterclaim, deduction or withholding including any deduction by way of counter claim, discount, abatement or otherwise (other than any deduction or withholding of tax as required by law).
- 5.5. Where credit has been granted, we may withdraw any credit facilities at any time, to review and/or amend credit terms and to take up credit references (and, subject to the Data Protection Act 1998 and the General Data Protection Regulation (EU) 2016/679 or any subsequent legislation, to submit information to credit reference agencies).
- 5.6. Except where otherwise agreed in writing by us, payment should be made by direct debit to the bank account stated on our invoice to you. Any payment queries should be directed to credit.controluk@jdecoffee.com.
- 5.7. If you fail to make any payment when it becomes due and payable, we reserve the right to:
 - 5.7.1. withhold all retrospective discounts and rebates otherwise due;
 - 5.7.2. defer or cancel deliveries;
 - 5.7.3. withhold service;
 - 5.7.4. recover the Rental Equipment;
 - 5.7.5. charge Hire Charges; and
 - 5.7.6. charge interest on any sum outstanding after the due date for payment at 3% per annum over the Lloyds Bank plc base rate for the time being in force together with all expenses, including legal charges, which we may incur in recovering the outstanding sums.
- 5.8. We may set off any sums due from you for Products and/or services (as applicable) Delivered and/or supplied against any sums which we may otherwise owe to you.

6. Delivery

- 6.1. We will use reasonable efforts to meet proposed Delivery dates and times, but they are only estimates and time for Delivery shall not be of the essence.
- 6.2. If you do not accept Delivery of the Products when they are ready for Delivery or we are unable to deliver Products due to your failure to provide necessary information or documents or your failure to accept Delivery, the Products will be deemed Delivered and risk passed to you and we may:
 - 6.2.1. store and insure the Products at your expense until actual Delivery; or
 - 6.2.2. sell the Products (other than Rental Equipment) at the best price reasonably obtainable and charge you for any shortfall below the Purchase Price; and
 - 6.2.3. if applicable, rent the Rental Equipment at the best price reasonably obtainable and charge you for any shortfall below the Hire Charges for the Hire Period.

For the avoidance of doubt, we will not pay your late delivery charges if we are unable to Deliver due to your act or omission.

- 6.3. Where we are responsible for the transit of Products to you, we shall be responsible for any damage, shortage or loss in transit, provided that you tell us (or our carrier, if applicable) within twenty-four (24) hours of Delivery or the proposed delivery date of the Products. Any remedy under this paragraph 6.3 shall be limited, at our option, to the replacement or repair of any Products which are proven to our satisfaction to have been lost or damaged in transit.

6.4. Delivery of Products

- 6.4.1. Claims for Delivery discrepancies relating to Delivery notes for Products with or without a receipting signature or where a receipting signature is for an unchecked quantity must be submitted within twenty-four (24) hours;
- 6.4.2. Pallets on which Products are supplied remain our property (or the property of our contractors). You must return all pallets left at point of Delivery to us or the relevant contractor after use. We may charge a deposit on pallets (which will be refunded to you on return of pallets to us) or to charge you for the cost of any pallets lost or destroyed in respect of which no deposit was taken.
- 6.4.3. All material which we (or our contractors) supply to you for the purpose of promoting the Products shall remain our property at all times. You shall comply with any request to return or destroy such promotional material.

6.5. Delivery of Equipment

- 6.5.1. You shall test and inspect the Equipment on Delivery to ensure that it complies with the requirements of this Contract.
- 6.5.2. You shall have an authorised representative present when we Deliver the Equipment. Acceptance of Delivery by such representative shall be proof that you have examined the Equipment and have found it to be in good condition, complete and fit for the purpose for which it is intended. If required, such representative shall sign a receipt confirming such acceptance.

7. Operation and use of the Rental Equipment

- 7.1. You shall during the term of the Contract:
 - 7.1.1. take such steps (including compliance with all safety and usage instructions provided by us) as may be necessary to ensure, so far as is reasonably practicable, that the Rental Equipment is at all times safe and without risk to health;
 - 7.1.2. clean the Rental Equipment in accordance with our recommendations, and you agree that any additional costs incurred in respect of labour or parts as a result of the Rental Equipment cleaning procedures not being properly followed will be invoiced to you at our then prevailing rates;
 - 7.1.3. not attach the Rental Equipment to any land or building so as to cause the Rental Equipment to become a permanent or immovable fixture on such land or building, unless you have our prior written consent;
 - 7.1.4. not use the Rental Equipment for any unlawful purpose;

- 7.1.5. promptly tell us if any Rental Equipment needs maintenance or is not operating correctly;
 - 7.1.6. not allow the Rental Equipment to be confiscated, seized or taken out of your possession or control under any distress, execution or other legal process, but if the Rental Equipment is so confiscated, seized or taken, you shall tell us and you shall at your sole expense use your best endeavours to procure an immediate release of the Rental Equipment and shall indemnify us on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - 7.1.7. deliver up the Rental Equipment at the end of the Hire Period or on earlier termination of this Contract at such address as we require, or if necessary allow us or our representatives access to the Site or any premises where the Rental Equipment is located for the purpose of removing the Rental Equipment. If you fail to return the Rental Equipment, including all its component parts, at the end of the Hire Period or on earlier termination of this Contract, we will charge you its full replacement value; and
 - 7.1.8. not do or permit to be done anything which could invalidate the insurances referred to in paragraph 11.3.
- 8. Purchase Option on Rental Equipment**
- 8.1. If you wish to purchase the Rental Equipment at the end of the Hire Period, you must request the Purchase Option Price from us no later than sixty (60) Business Days' before the last Business Day of the Hire Period.
 - 8.2. If we wish to sell the Rental Equipment following your request under paragraph 8.1, we will confirm the Purchase Option Price to you at least thirty (30) Business Days before the last Business Day of the Hire Period.
 - 8.3. You shall, subject to paragraph 8.4, have the option, exercisable by not less than twenty (20) Business Days' written notice to us, to purchase the Rental Equipment on the last Business Day of the Hire Period.
 - 8.4. The Purchase Option may be exercised only if all amounts due to us under this Contract up to the date of exercise of the Purchase Option have been paid in full by you.
 - 8.5. Upon completion of the purchase of the Rental Equipment under this paragraph 8 and payment in cleared funds of the Purchase Option Price, such title to the Rental Equipment as we had on the date that you took Delivery of the Rental Equipment shall transfer to you. The Rental Equipment shall transfer to you in the condition and at the Site in which it is found on the date of transfer.
- 9. Equipment Maintenance Terms**
- 9.1. *Maintenance Services*
 - 9.1.1. During the Maintenance Period, we shall provide you with the Maintenance Services for the Maintained Equipment at the Site.
 - 9.1.2. If you inform us that the Maintained Equipment is due for Planned Maintenance (if required), we shall:
 - 9.1.2.1. use our reasonable endeavours to attend at the Site during Normal Business Hours on a date to be agreed between the parties; and
 - 9.1.2.2. use our reasonable endeavours to perform Planned Maintenance of the Maintained Equipment during such visit.
 - 9.1.3. If you inform us that the Maintained Equipment is malfunctioning, has failed or is not in Good Working Order, we shall:
 - 9.1.3.1. use all reasonable endeavours to attend at the Site within the relevant Response Time; and
 - 9.1.3.2. use all reasonable endeavours to perform Emergency Maintenance of the Maintained Equipment.
 - 9.1.4. Emergency Maintenance shall be charged at the Additional Services Rates for each of our Technician(s) reasonably required to attend the Site. Any additional charges shall be calculated from when the Technician(s) arrives at the Site until they leave the Site.
 - 9.1.5. In performing the Maintenance Services, we shall use all reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order while in attendance at the Site. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours (in the case of Planned Maintenance), we shall either arrange for a further visit to the Site within Normal Business Hours to complete the repair, or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site.
 - 9.1.6. While on the Site, our Technicians will comply with your reasonable health and safety and security policies, provided that these policies have been brought to their attention.
 - 9.2. *Your Obligations*
 - 9.2.1. You shall:
 - 9.2.1.1. ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent personnel to use it, and follow any operating instructions as we may give from time to time;
 - 9.2.1.2. tell us promptly if the Maintained Equipment is discovered to be operating incorrectly;
 - 9.2.1.3. at all reasonable times allow our Technicians full and free access to the Site(s) and to the Maintained Equipment, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable them to perform the Services;
 - 9.2.1.4. provide us with any information that is reasonably requested in

- the performance of the Services;
- 9.2.1.5. take any steps reasonably necessary to ensure the safety of our Technicians when attending the Site(s);
 - 9.2.1.6. not allow any person other than us to maintain, alter, modify or adjust the Maintained Equipment without our prior written approval;
 - 9.2.1.7. not move the Maintained Equipment from the Site without our prior written approval (approval not to be unreasonably withheld or delayed); and
 - 9.2.1.8. only use supplies or materials which we supply or approve (approval not to be unreasonably withheld or delayed).
- 9.3. *Replacements and spare parts*
- 9.3.1. In performing the Planned Maintenance and the Additional Services, we shall use all reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. Where we can reasonably source individual spare parts for less than £10 excluding VAT per attendance at a Site, we shall not charge you for the spare parts. Where we are unable to source individual spare parts for less than this amount, we shall have the right to charge you for the spare parts.
 - 9.3.2. All spare parts and/or replacements which we provide to you shall become part of the Maintained Equipment. All parts and components which we remove from the Maintained Equipment in the course of performing the Planned Maintenance and/or the Additional Services shall no longer form part of the Maintained Equipment.
- 9.4. *Excluded Maintenance*
- 9.4.1. We are not obliged to perform any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the following causes (each an "Excluded Cause"):
 - 9.4.1.1. a defect in the manufacturer's design of the Maintained Equipment;
 - 9.4.1.2. faulty materials or workmanship in the manufacture of the Maintained Equipment;
 - 9.4.1.3. use of the Maintained Equipment with equipment or materials which we have not supplied or approved in writing;
 - 9.4.1.4. any maintenance, alteration, modification or adjustment performed by persons other than us or our employees or agents unless approved by us in accordance with paragraph 9.2.1.6;
 - 9.4.1.5. the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied;
 - 9.4.1.6. a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
 - 9.4.1.7. a failure or malfunction in the environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of those environmental controls by you;
 - 9.4.1.8. a complete overhaul or re-siting of the Equipment is requested by you or deemed necessary by us, in which case a separate Order shall be required; or
 - 9.4.1.9. the neglect, loss, wilful damage or misuse of the Maintained Equipment;
- and this excluded maintenance is called the "Excluded Maintenance".
- 9.4.2. Where we are performing, or have performed the Services in circumstances where it is established that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, we may charge Additional Services Charges in respect of that work.
- 9.5. *Maintenance Charges*
- 9.5.1. For the performance of Planned Maintenance, you shall pay to us the Standard Maintenance Charges.
 - 9.5.2. For the performance of any Additional Services, you shall pay to us the Additional Services Charges.
 - 9.5.3. The Standard Maintenance Charges and the Additional Services Charges shall be inclusive of all expenses (other than the costs of spare parts), and we shall be responsible for all costs and expenses incurred in providing the Maintenance Services (other than the costs of spare parts).
 - 9.5.4. The Standard Maintenance Charges shall be due and payable in full to us within thirty (30) days of the date of a valid invoice from us. Any Additional Services Charges shall be due and payable monthly, within thirty (30) days of the date of a valid invoice from us. Any charges for spare parts recoverable in accordance with paragraph 9.3.1 shall be due within thirty (30) days of the date of a valid invoice from us.
 - 9.5.5. We may, at any time after the first anniversary of the date that you take Delivery of the Equipment, increase the Standard Maintenance Charges and the Additional Services Rates by giving to you not less than twelve (12) weeks written notice.
- 10. Unwanted Products**
- 10.1. Products are not supplied on a trial basis. You are responsible for verifying suitability and compatibility of Products before purchase or rental.

11. Title and risk

- 11.1. Risk in Products shall pass to you on completion of unloading the Products at the Site (or in the case of any back haulage, upon collection of such Products from us).
- 11.2. Title to Products other than Rental Equipment shall only pass to you once we receive payment in full (in cash or cleared funds) for them. Title to Rental Equipment shall not pass to you until you have opted to purchase such Rental Equipment on a permanent basis and we have received payment for it in full (in cash or cleared funds in accordance with paragraph 8). Until title to the Products has passed to you:
- 11.2.1. you shall have no right, title or interest in or to the Products (save the right to possession and use of the Equipment subject to the terms and conditions of this Contract);
- 11.2.2. you shall store them so that they remain readily identifiable as our property;
- 11.2.3. you shall not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- 11.2.4. you shall maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 11.2.5. you may sell the Products (save for any Rental Equipment, which you may only use), in the ordinary course of business;
- 11.2.6. you shall give us such information relating to the Products as we may require from time to time;
- 11.2.7. we shall be entitled to all monies received from any sale or insurance claims relating to the Products (which you shall receive as trustee for us); and
- 11.2.8. we shall be entitled to recover and resell the Products and enter any premises where the Products are situated, for that purpose, and our retention of title of any Products in accordance with this paragraph 11.2 shall not affect our right to maintain an action for the price of such Products.
- 11.3. Unless and until title to the Rented Equipment passes to you or it is redelivered to us, such Rental Equipment shall be at your sole risk during the Hire Period and any further term during which the Rental Equipment is in your possession, custody or control. During such time you shall at your own expense, obtain and maintain the following insurances:
- 11.3.1. insurance of the Rental Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as we may from time to time nominate in writing; and
- 11.3.2. insurance for such amounts as a prudent owner or operator of the Rental Equipment would insure for to cover any third party or public liability risks of whatever nature and however arising in connection with the Rental Equipment.

12. Confidentiality

- 12.1. Each Party undertakes to the other Party that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other

Party or of any member of the group of companies to which the other Party belongs, unless permitted by paragraph 12.2.

- 12.2. Each Party may disclose the other Party's confidential information:

- 12.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out its obligations under this Contract. Each Party shall ensure that its employees, officers, representatives or advisers to whom the other Party's confidential information is disclosed comply with this paragraph 12; and
- 12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 12.3. Neither of us shall use any of the other Party's confidential information other than to perform our obligations under this Contract.

13. Intellectual Property Rights

- 13.1. Nothing in this Contract shall be deemed to give you any licence or other right to use any of our Intellectual Property Rights.
- 13.2. You acknowledge that all Intellectual Property Rights in the Products belong to us and you shall only have the right to use them in accordance with this Contract.
- 13.3. You will not, without our prior written consent,
- 13.3.1. use our or our Associated Companies' name, Intellectual Property Rights, trademarks, logo, images or other identifying marks in any sales, marketing or publicity activities or materials, or
- 13.3.2. issue a press release or other kind of public statement regarding us.

14. Warranties

- 14.1. *Warranties for Products (other than Equipment)*
- 14.1.1. We warrant only that:
- 14.1.1.1. the Products conform in every respect with all statutory requirements of the United Kingdom; and
- 14.1.1.2. the Products shall at the time of Delivery be of "satisfactory quality" (as defined in the Sale & Supply of Goods Act 1994);
- 14.1.2. If the Products (other than Equipment) do not conform to the warranties in paragraph 14.1.1 then we will either rectify the defect, replace the defective Products free of charge, or take them back and refund the Purchase Price provided that:
- 14.1.2.1. you give written notice of any alleged defect to us within two (2) days of discovery of the defect; and
- 14.1.2.2. on discovery of the defect you make no further use of the allegedly defective Products and allow us a reasonable opportunity to collect or inspect them; or, at our request you destroy the allegedly defective Products.
- 14.1.3. We shall not be liable for a breach of the warranty in paragraph 14.1.1 if:
- 14.1.3.1. the defect arises because you failed to follow our oral or written instructions as to the

- storage of the Products or (if there are none) good trade practice; or
- 14.1.3.2. you alter the relevant Product without our written consent.
- 14.2. *Warranties for Equipment*
- 14.2.1. We warrant to you that at the time of Delivery the Equipment is free from defects of workmanship and materials. We undertake (subject to the remainder of this paragraph 14.2), at our option, to repair or replace Equipment which is found to be defective as a result of faulty materials or workmanship within twelve (12) months of Delivery (or such other period as specified by us in writing).
- 14.2.2. We shall not in any circumstances be liable for a breach of the warranty contained in paragraph 14.2.1 unless you give written notice of the defect to us within two (2) days of the time when you discover or ought to have discovered the defect, and after receiving the notice, we are given a reasonable opportunity of examining such allegedly defective Equipment, the defect is directly or indirectly attributable to defective material, workmanship or design and you (if we ask you) return such Equipment to our place of business or other location we request (at our cost) for the examination to take place there.
- 14.2.3. We shall not be liable for a breach of the warranty in paragraph 14.2.1 if:
- 14.2.3.1. you make any use of Equipment in respect of which you have given written notice to us under paragraph 14.2.2;
- 14.2.3.2. the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;
- 14.2.3.3. the defect arises because of your improper use of the Equipment, failure to clean the Equipment in accordance with our recommendations, or because you use it outside its normal application;
- 14.2.3.4. the defect is due to water quality or the build-up of limescale; or
- 14.2.3.5. you alter or repair the relevant Equipment without our written consent.
- 14.2.4. Any repaired or replacement Equipment provided by us shall be under warranty for the unexpired portion of the original Equipment's warranty period.
- 14.2.5. Insofar as the Equipment comprises or contains equipment or components which we did not manufacture or produce, you shall be entitled only to such warranty or other benefit as we have received from the manufacturer.
- 14.2.6. If we fail to remedy any material defect in the Rental Equipment in accordance with this paragraph 14, we shall, at your request, accept the return of part or all of the Rental Equipment and make an appropriate reduction to the Hire

- Charges payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).
- 14.3. *Warranties for Services*
- 14.3.1. Provided that the Equipment has been maintained in accordance with paragraph 9.2, we warrant that the Services shall be performed:
- 14.3.1.1. by suitably qualified personnel;
- 14.3.1.2. using all reasonable skill and care and in accordance with Good Industry Practice (meaning in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances; and
- 14.3.1.3. in accordance with all applicable laws and regulations in force from time to time.
- 14.4. The Products are intended for sale, use and consumption in the United Kingdom. We accept no responsibility whatsoever or howsoever arising under overseas legislation, rules or administrative acts in the event that the Products are exported from the United Kingdom to countries outside the European Economic Area ("EEA"). Nothing in this paragraph restricts your right to export the Products to Member States of the EEA.
- 14.5. The warranties in this paragraph 14 apply to the exclusion of all other warranties, conditions and other terms whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law. This paragraph 14.5 shall not exclude any warranty implied by virtue of section 12 of the Sale of Goods Act 1979.

15. Complaints, Safety and Recall

- 15.1. You shall comply with, and tell your customers about, our guidelines concerning storage and use of Products (in particular, but without limitation, to store Products in cool, dry conditions).
- 15.2. You shall tell us of any customer complaints and comply with our reasonable directions in relation to them.
- 15.3. We may recall any Products which we have already supplied and replace such Products or refund or credit the Purchase Price paid for them.
- 15.4. You shall co-operate with all our reasonable instructions in relation to any defect in Products which we have notified you may expose consumers to any risk.
- 15.5. For the avoidance of doubt, unless otherwise agreed by us in writing, we will not be liable for any administration fees or other penalties as a result of any customer complaints or recall action taken.

16. Liabilities and Indemnities

- 16.1. Nothing in this Contract shall limit or exclude our liability for:
- 16.1.1. death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- 16.1.2. fraud or fraudulent misrepresentation;

- 16.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 16.1.4. defective products under the Consumer Protection Act 1987;
 - 16.1.5. the Food Safety Act 1990; or
 - 16.1.6. any matter in respect of which it would be unlawful for us to exclude or restrict liability.
- 16.2. Subject to paragraph 16.1:
- 16.2.1. we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any interruption or loss of business, loss of profit, or any indirect or consequential loss whether arising under or in connection with the Contract or for any delay in providing or failure to provide any maintenance, service or repair to the Rental Equipment; and
 - 16.2.2. our total liability to you for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to 100% of the Purchase Price and/or Hire Charges and/or Maintenance Charges (as applicable) paid for Products under this Contract.
- 16.3. You acknowledge that we shall not be responsible for any loss of or damage to Equipment arising out of or in connection with any negligence, misuse, incorrect storage, mishandling of Equipment including but not limited to the damage due to water quality or build-up of limescale or otherwise caused by you or your officers, employees, agents and contractors, and you undertake to indemnify us 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 you to comply with the terms of this Contract.
- 17. Termination of this Contract**
- 17.1. Without limiting other rights or remedies, either of us may terminate this Contract with immediate effect by giving written notice to the other Party if:
- 17.1.1. the other Party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days (or such other period agreed between the parties, acting reasonably) of that party being notified in writing to do so, and in such circumstances, we shall be entitled to terminate any or all Contracts with you and/or suspend any further deliveries under any or all Contracts with you without any liability to you and if any Products have been Delivered but not paid for, the Purchase Price shall become immediately due and payable and if not paid when demanded, we shall be entitled to enter upon any premises where the Products are situated during normal business hours to remove the Products;
 - 17.1.2. the other Party takes any step or action in connection with its entering administration, examinership, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if any step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 17.1.3. the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
 - 17.1.4. the other Party is purchased by or acquires a competitor of the notifying Party; or
 - 17.1.5. the other Party's financial position deteriorates to such an extent that its capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 17.2. Without limiting our other rights or remedies, we may, at our sole discretion, terminate the Contract or suspend deliveries, with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract on the due date for payment and remain in default at least fourteen (14) days after being notified in writing to make such payment.
- 17.3. Termination of the Contract shall not affect any rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
- 17.4. Upon termination of this Contract, however caused:
- 17.4.1. you shall take proper care of the Rental Equipment until we collect it;
 - 17.4.2. we may, by ourselves or our authorised representatives retake possession of the Rental Equipment and for this purpose may enter the Site or any premises at which the Rental Equipment is located; and
 - 17.4.3. without prejudice to any of your rights or remedies, you shall pay to us on demand:
 - 17.4.3.1. all Hire Charges and other sums due but unpaid at the date of such demand together with any interest accrued in accordance with paragraph 5; and
 - 17.4.3.2. any costs and expenses which we incur in recovering the Rental Equipment and/or in collecting any sums due under this Contract (including any storage, insurance, repair, transport, legal and remarketing costs).
- 18. Force majeure**
- 18.1. Neither of us shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any obligations under this Contract if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for two (2) weeks, the Party that is not affected may terminate this Contract by giving seven (7) days' written notice to the other Party.
- 19. General**
- 19.1. Notices.**
- 19.1.1. Any notice or other communication given by one Party to the other Party under or

- in connection with the Contract shall be in writing, addressed to the recipient at its registered office or such other address as the recipient may have specified to the other Party in writing in accordance with this paragraph, and shall be delivered personally, or sent by pre-paid first-class post or other next working day delivery service, commercial courier, or email.
- 19.1.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in paragraph 19.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 19.1.3. Notwithstanding the provisions of paragraph 19.1.1 and 19.1.2, a notice may not be given or delivered by email; and a copy of the notice must be sent to the Legal Department of the recipient at its registered office or such other address as the recipient may have specified in accordance with paragraph 19.1.1.
- 19.1.4. The provisions of this paragraph shall not apply to the service of any proceedings or other documents in any legal action.
- 19.2. **Entire Agreement.** This Contract constitutes the entire agreement between the parties for the sale and purchase of Goods and Services and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Neither of us shall have any remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 19.3. **Assignment.** You shall not be entitled to assign or otherwise transfer any rights or obligations under this Contract or any part of it without our prior written consent.
- 19.4. **Variation.** Unless stated otherwise in this Contract, no variation of this Contract shall be effective unless it is in writing and signed by us (or our authorised representatives).
- 19.5. **Third party rights.** Only us, our successors and our permitted assignees, shall have any right to enforce any of the terms of this Contract.
- 19.6. **Further assurance.** At our own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Contract.
- 19.7. **Counterparts.**
- 19.7.1. This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 19.7.2. Transmission of the executed signature page of a counterpart of this Contract by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Contract. If this method of delivery is adopted, without prejudice to the validity of the agreement thus made, each Party shall provide the other Party with the original of such counterpart as soon as reasonably possible thereafter.
- 19.8. **Samples.** All samples, drawings, descriptive matter, specifications and advertising issued by us, and any descriptions or illustrations contained in our catalogues or brochures are issued or published for illustrative purposes only and they do not form part of this Contract.
- 19.9. **No relationship of principal and agent.** Nothing in this Contract shall be deemed to create a relationship of principal and agent between the parties. Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, make either of us the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other. Each of us confirm we are acting on our own behalf and not for the benefit of any other person.
- 19.10. **Severance.** If any provision or part-provision of this Contract 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 paragraph shall not affect the validity and enforceability of the rest of this Contract.
- 19.11. **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy; nor prevent or restrict the further exercise of that or any other right or remedy.
- 19.12. **Anti-Bribery.** In performing its obligations under the Contract, the parties shall:
- 19.12.1. comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including (but not limited to) the Bribery Act 2010 ("Relevant Requirements");
- 19.12.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 19.12.3. have and shall maintain in place through the term of this agreement its own policies and procedures, including (but not limited to) adequate procedures to ensure compliance with the Relevant Requirements; and
- 19.12.4. immediately report any request or demand for any undue financial or other advantage of any kind received by such party in connection with the performance of the Contract.
- 19.13. **Personal Data.**
- 19.13.1. Each party will ensure that the processing of the other party's personal data is in accordance with all applicable laws and regulations in force from time to time including but not limited to the Data Protection Act 1998 and General Data Protection Regulation (EU) 2016/679.

- 19.13.2. Each party will take appropriate technical and organisational security measures to safeguard the other party's personal data from loss or damage or unlawful disclosure or processing.
- 19.13.3. Neither party will transfer the other party's data outside the European Economic Area without such originating party's prior consent.
- 19.13.4. Each party will notify the other party immediately if it suffers any data breaches involving such other party's personal data.

20. Governing law

- 20.1. This Contract 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 interpreted in accordance with the laws of England and Wales.

21. Jurisdiction

- 21.1. The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Dated: 1st August 2018
