

# **Trescal Limited.**

## **Terms and Conditions of Hire.**

### **DEFINITIONS.**

- 1.1 "Owners" means Trescal Limited of Hewett Road, Gapton Hall Industrial Estate, Great Yarmouth NR31 0NN
- 1.2 "Hirer" means the person who contracts with the Owner for the hire of the Equipment.
- 1.3 "Contract" means the contract for the hire of the Equipment by the owner to the Hirer.
- 1.4 "Conditions" means the standard terms and conditions of hire of the Owner set out on this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Owner and the Hirer.
- 1.5 "Equipment" means the equipment, which the Owner is to have under the Contract upon the Conditions.
- 1.6 "Rental" means the rental payable by the Hirer for the Equipment inclusive of any increases made pursuant to these Conditions.
- 1.7 "Writing" includes letter, email, facsimile transmission and comparable means of communication.
- 1.8 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.9 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **BASIS OF THE HIRE.**

- 2.1 The Owner shall hire to the Hirer in accordance with any offer of the Owner which is accepted by the Hirer or any offer of the Hirer which is accepted by the Owner subject in either case to these Conditions which shall govern the Contract to the exclusive of any other terms and conditions subject to which any such offer is accepted or purported to be accepted to any such offer is made or purported to be made by the Hirer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the Owner and Hirer before hire commences.
- 2.3 Any advice or recommendations given by the Owner or its employees or agents to the Hirer or its employees or agents as to the storage, application or use of the Equipment which is not confirmed in Writing by the Owner is followed or acted upon entirely at the Hirer's own risk and accordingly the Owner shall not be liable for any such advice or recommendation which is not so confirmed.
- 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 the Owner shall be subject to correction without any liability on the part of the Owner.

### **ORDERS FOR HIRE.**

- 3.1 No offer made by the Hirer shall be deemed to be accepted by the Owners unless and until confirmed in Writing by the Owner.
- 3.2 No offer from either party which has been accepted by the other party may be cancelled by the Hirer except with the agreement in Writing of the Owner and on the terms that the Hirer shall indemnify the Owner in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Owner as a result of cancellation.

### **PERIOD OF HIRE.**

- 4.1 The hire period shall commence from the date on which the Equipment is despatched by the Owner to the Hirer or collected by the Hirer or its agents from the premises of the Owner and shall continue up to and including the day upon which the Equipment is received back at the Owner's premises from which it was despatched or collected.
- 4.2 The minimum periods of hire shall be three days. There is no maximum period of hire.

### **RENTALS.**

- 5.1 The charges for the hiring of the Equipment shall be the Owner's quoted rental charge. All rental charges quoted are valid for 30 days only or until earlier acceptance by the Hirer after which time they may be altered by the Owner without giving notice to the Hirer.
- 5.2 Except as otherwise stated under the terms of any quotation of the Owner and unless otherwise agreed in Writing between the Hirer and the Owner all rental charges are given by the Owner on an ex works basis and where the Owner agrees to deliver the Equipment otherwise than at the Owner's premises the Hirer shall be liable to pay the Owner's charges for transport packaging and insurance.
- 5.3 The rental charge is exclusive of any applicable value added tax, which the Hirer shall be additionally liable to pay to the Owner.

## **PAYMENT.**

- 6.1 All invoices are payable without discount or deduction of any kind in Pounds Sterling within 30 of the date of invoice unless otherwise agreed by the Owner in Writing ("the due date"). All invoices are payable at the Owner's premises stated on the invoice and in no circumstance shall the Hirer be entitled to make any deduction or withhold payment for any reason at all. Any payments sent by post shall be so sent at the risk of the Hirer.
- 6.2 Time for payment shall be of the essence of the Contract. If the Hirer fails to pay the invoice price by the due date then, without prejudice to any other right or remedy available to the Owners, the Owner shall be entitled to:
  - 6.2.1 cancel the Contract and recover the Equipment without prior notice being given to the Hirer:
  - 6.2.2 charge the Hirer interest on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) on a daily basis at a rate of 4% over the base rate from time to time quoted by National Westminster Bank Plc; and
  - 6.2.3 be reimbursed by the Hirer all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

## **DELIVERY.**

- 7.1 Delivery of the Equipment shall be made by the Hirer or its agent collecting the Equipment at the Owner's premises at any times after the Owner has notified the Hirer that the Equipment is ready for collection or if some other place for delivery is agreed by the Owner delivering the equipment to that place.
- 7.2 Any dates quoted for delivery of the Equipment are approximate only and the Owner shall not be liable for any delay in delivery of the Equipment howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Owner in Writing.
- 7.3 If the Owner fails to deliver the Equipment for any reason other than any cause beyond the Owner's reasonable control or the Hirer's fault and the Owner is accordingly liable to the Hirer the Owner's liability shall be limited to the excess (if any) of the cost to the Hirer (in the cheapest available market) of hiring similar Equipment to replace that not delivered over the price of the Equipment.
- 7.4 If the Hirer fails to take delivery of the Equipment or fails to give the Owner adequate delivery instructions at the time stated for delivery (otherwise) than by reason of any cause beyond the Hirer's reasonable control or by reason of the Owner's fault) then without prejudice to any other right or remedy available to the Owner the Owner may:
  - 7.4.1 store the Equipment until actual delivery and charge the Hirer for the reasonable costs of storage; or
  - 7.4.2 hire out the Equipment at the best price readily obtainable and (after deducting all reasonable storage and hiring expenses) account to the Hirer for the excess over the rental under the Contract or charge the Hirer for any short fall below the rental charge under the Contract.

## **USE OF EQUIPMENT.**

8. Subject as hereinafter provided, the Hirer may use the Equipment for the purpose of its business. The Equipment is not to be used and the Hirer is not to permit it to be used for any purpose for which it is not expressly designed and in that respect the Hirer must observe all the manufacturer's instructions and other regulations that may be issued for the proper use thereof.

## **DUTIES OF THE HIRER.**

- 9.1 The Hirer shall not remove, deface or cover up any identification marks or plates affixed to the Equipment nor attempt or purport to do so nor permit the same.
- 9.2 The Hirer shall not without the previous consent in Writing of the Owner, sell or offer for sale mortgage pledge re-hire or part with possession of or otherwise deal with the Equipment or any part of the Equipment and shall protect the same against distress, execution or seizure and shall indemnify the Owner against all losses, damages, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition.
- 9.3 The Hirer shall not, without the previous consent in Writing of the Owner, take or allow the Equipment to be taken out of the United Kingdom mainland and, in the event of that consent being given only on such terms as the Owner deems fit.
- 9.4 Subject to the provision of sub-clause (3) hereof, in the event of the Equipment being taken out of the United Kingdom mainland or being used in a hazardous environment, the definition of which shall be at the discretion of the Owner and for avoidance of doubt an offshore installation in the oil industry is a hazardous environment, then the Hirer shall keep the Equipment fully insured with an insurance company of good repute or with Lloyds Underwriters against loss or damage from all risks. The Hirer shall notify the insurers that the Equipment is on hire from the Owner and request the insurers to endorse a note of such interest on the Policy of Insurance naming the Owner as loss payee, shall on demand show to the Owner the policy insurance, the premium receipts and Insurance Certificate and shall not use or allow the Equipment to be used for any purposes not permitted by the terms and conditions of the policy of insurance to do or allow to be done any act or thing whereby the insurance may be invalidated. If the Hirer shall make default in the payment of any premium in respect of the insurance the Owner may pay such premium in which event the Hirer shall repay the amount thereof to the Owner on demand.
- 9.5 The Hirer shall throughout the term of hire keep the Equipment in good working condition and order and return on completion of the hire the Equipment in equally good working condition and order (fair wear and tear excepted) and make good to the owner all loss of or damage to the Equipment from whatever cause the same may arise, fair wear and tear excepted

#### **LIMITATION OF LIABILITY.**

- 10.1 Because the potential losses which the Hirer might suffer as a result of any breach of Contract by the Owner are more readily ascertainable by the Hirer AND because such losses could be wholly disproportionate to the Rental AND so that the Owner can keep the Rental as low as reasonably possible THE HIRER AGREES with the Owner limiting its liability in accordance with these Conditions.
- 10.2 If a Court finds that any Condition or Sub-Condition in these Conditions fails the requirements of reasonableness under the Unfair Contract Terms Act 1977 the Owner nevertheless excludes the relevant liability to the extent that the Court finds reasonable.

#### **CLAIMS NOTIFICATION.**

- 11.1 It is the duty of the Hirer to inspect all Equipment immediately upon delivery.
- 11.2 Any claim that the Equipment does not comply with the Owner's offer as accepted by the Hirer or the Hirer's offer as accepted by the Owner shall be notified by the Hirer to the Owner within 24 hours of the delivery of the Equipment.
- 11.3 Any claim that the Equipment has been delivered damaged or the Equipment is defective shall be notified by the Hirer in Writing to the Owner within 24 hours of the Equipment delivery or collection which the Hirer agrees is a reasonable period in which to discover such damages and defects in the Equipment.
- 11.4 Unless the Owner receives notification of damage or defective Equipment in accordance with the above Conditions it shall be entitled to treat the Contract as completed in accordance with its advice note or notes accompanying delivery of the Equipment and accordingly the Owner shall not be liable for any damage or defect in the Equipment.
- 11.5 Any claim under this Condition must be in Writing and must contain full details of the claim.
- 11.6 Any claim made by the Hirer under the Contract shall not entitle the Hirer to return the Equipment to the Owner but rather the Owner shall be afforded reasonable opportunities and facilities to investigate any claims made under this Condition at the Hirer's place of business if it should so elect. The Hirer shall if so requested in Writing by the Owner promptly return any Equipment which is the subject of any claim together with any packing security packed and carriage paid to the Owner for examination and such Equipment shall remain at the Hirer's risk.
- 11.7 The Owner shall have no liability with regard to any claim in respect of which the Hirer has not complied with the provisions of this Condition.

#### **EXTENT OF LIABILITY.**

- 12.1 The Owner shall have no liability to the Hirer (other than liability for death or personal injury resulting from the Owner's negligence) for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence breach of statutory or other duty on the part of the Owner or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except in accordance with this Condition.
- 12.2 If the Hirer establishes that any Equipment has not been delivered, has been delivered damaged, does not comply with the offer for Equipment or is defective the Owner shall at its option replace with similar Equipment any Equipment which is missing, lost or damaged or does not comply with the said offer or allow the Hirer credit for their invoice value or repair any damaged Goods.
- 12.3 The delivery of any repaired or replacement Equipment shall be at the Owner's premises or other delivery point specified for the original Equipment.
- 12.4 No claim against the Owner shall be entertained for any defect in the Equipment where any person other than the Owner has done any adjustments, alterations or other work to the Equipment.
- 12.5 Under no circumstances shall the Owner be liable for any claim made by the Hirer for consequential or economic loss or damage.
- 12.6 In no circumstances shall the liability of the Owner to the Hirer exceed the invoice value of the Equipment (except in the case of liability for death or personal injury resulting from the Owner's negligence).

#### **INDEMNITY.**

- 13. The Hirer shall be solely responsible for and hold the Owner fully indemnified against all claims, demands, liabilities, losses, damages, proceeding, costs and expenses suffered or incurred by the Owner as a result of any breach or default on the part of the Hirer in the discharge of its obligations under this Contract.

#### **INSOLVENCY OF CUSTOMER.**

- 14.1 This condition applies if:
  - 14.1.1 The Hirer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) is deemed insolvent or adjudicated bankrupt or (being a company) has a petition for its winding-up presented against it or convenes, calls or holds a meeting for the purpose of going into liquidation (otherwise than for the purposes of amalgamation or reconstruction): or
  - 14.1.2 an encumbrancer taken possession, or a receiver is appointed, of any of the property or assets of the Hirer; or
  - 14.1.3 the Hirer ceases, or threatens to cease, to carry on business; or

- 14.1.4 being a partnership any of the aforementioned events occurs with respect to the partnership or to any partner therein or the partnership is dissolved; or
- 14.1.5 the Owners reasonably apprehends that any of the events mentioned above is about to occur in relation to the Hirer and notifies the Hirer accordingly.
- 14.1.6 If this Condition applies then without prejudice to any other or remedy available to the Owner, the Owner shall be entitled to cancel the contract without any liability to the Hirer and it shall thereupon be lawful for the Owner to retake possession of the equipment and for that purpose enter into or upon any premises where the Equipment may be and the determination of the Contract under this Condition shall not effect the right of the Owner to recover from the Hirer any monies due to the owner under the Contract or damages for breach thereof.

#### **OWNERSHIP.**

- 15. The Equipment shall at all times remain the property of the Owners and the Hirer shall have no rights to the Equipment other than as Hirer shall not do or permit or cause to be done any matter or thing whereby the rights of the Owner in respect of the Equipment are or may be prejudicially affected

#### **NOTICE OF TERMINATION OF CONTRACT.**

- 16. Where the period of hire is indeterminate or having been defined becomes indeterminate the Contract shall be determinable by seven day's notice in Writing given by either party to the other (except in cases where the Equipment has been lost or damaged). In the event of the Hirer desiring to terminate the Contract and failing to give such notice, hire for the period of seven days' notice shall be chargeable.

#### **FORCE MAJEURE.**

- 17. The Seller shall not be liable for any failure in the performance of any of its obligations under the Contract caused by factors outside its control.

#### **FORBEARANCE.**

- 18. No forbearance, indulgence or relaxation on the part of the Owner shown or granted to the Hirer in respect of any of the provisions of the Contract shall in any way affect, diminish, restrict or prejudice the rights or powers of the Owner under the Contract or operate as or be deemed to be a waiver or any breach by the Hirer of the terms and conditions of the Contract.

#### **GOVERNMENT REGULATIONS.**

- 19.1 The Hirer will be responsible for compliance with relevant regulation issued by the Government or Local Authorities, including Regulations under the Factories Acts, Health and Safety at Work etc. Act.
- 19.2 The following information is provided only for the guidance and assistance of the Hirer:
  - 19.2.1 The Equipment may be classified as Electrical, Electro Mechanical and Electronic Equipment.
  - 19.2.2 The Equipment is checked and supplied in accordance with the manufacturer's published specifications and when used in normal or prescribed applications and within the parameters set out for mechanical and electrical performances should not cause danger or hazard to health and safety, provided that normal engineering and safety practices are observed, and such products are used only by trained and qualified personnel.
  - 19.2.3 If operating manuals are supplied, all usage of the Equipment must be in accordance with such manuals.
  - 19.2.4 If the Hirer is in any doubt about any aspect relating to the correct use of the Equipment, then the Hirer should contact the Owner prior to the use of the Equipment.

#### **LAW AND CONSTRUCTION.**

- 20. The Contract shall be governed by English Law and the Hirer consents to the exclusive jurisdiction of the English Courts in all matters regarding the Contract except to the extent that the Owner invokes the jurisdiction of the Courts of any other country.

#### **NOTICES.**

- 21. Any notices to be given under the Contract shall be in Writing and telexed, sent by facsimile transmission or forwarded by first class prepaid letter post to the receiving party at its business address as last notified in Writing to the other party and shall be deemed to have been given on the date of the telex or facsimile transmission or on the day following that on which the notice was posted.