



# CINELEASE UK LIMITED

## TERMS and CONDITIONS OF HIRE

- 1. Definitions**
- 1.1. "Contract" means the agreement between the Supplier and the Customer for the hire of the Equipment and/or Vehicles and/or Supplier Personnel and/or Purchase of Goods incorporating these Terms and Conditions.
- 1.2. "Customer" means the person who hires Equipment and/or Vehicles and/or Supplier Personnel and/or purchases Goods from the Supplier;
- 1.3. "Delivery" means delivery of the Equipment pursuant to clause 4.2;
- 1.4. "Equipment" means the equipment set out in the Quotation;
- 1.5. "Goods" means consumables or other goods;
- 1.6. "Hire Charges" means the rates agreed and payable for the hire of Equipment set out in the Quotation;
- 1.7. "Hire Commencement Date" means the time and date specified for delivery in the Quotation;
- 1.8. "Hire Period" means the date commencing or the Hire Commencement Date and ending on the Termination Date (unless otherwise agreed in writing between the Supplier and the Customer);
- 1.9. "Order" means the Customer's order for (whether in writing or verbally, by telephone or in person) for the Hire of Equipment and/or Vehicles and/or Supplier Personnel and/or the purchase of Goods;
- 1.10. "Person" means a natural person corporate or unincorporated body (whether or not having separate legal personality);
- 1.11. "Quotation" means the written quotation provided by the Supplier to the Customer setting out the price for hire of Equipment and/or Vehicles and/or Supplier Personnel and/or the sale of Goods;
- 1.12. "Supplier" means Cinelease UK Limited of 11 Vine Street, Uxbridge, Middlesex, UB8 1QE (company number 0869121);
- 1.13. "Supplier Personnel" means the employees of the Supplier and/or the contractors of the Supplier who are engaged by the Customer in conjunction with the hire of Equipment and/or Vehicles and/or provision of Supplier Personnel;
- 1.14. "Termination Date" means the date set out in the Quotation as the termination of the Hire Period or as the parties may otherwise agree in writing;
- 1.15. "Total Loss" the Equipment is, in the Supplier's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated;
- 1.16. "Vehicles" means a vehicle or vehicles hired by the Customer;
- 2. Basis of Contract**
- 2.1. Unless otherwise agreed by a director in writing an Order constitutes an offer by the Customer to hire Equipment and/or Vehicles and/or Supplier Personnel in accordance with the Quotation.
- 2.2. An Order may be made in writing (including email) or verbally by telephone or in person.
- 2.3. The Order shall be deemed to be accepted when the Supplier issues written acceptance of the Order or takes steps which clearly indicate acceptance of the Order.
- 2.4. The Contract constitutes the entire agreement between the Supplier and Customer. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5. These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate which are implied by trade, custom, practice or course of dealing.
- 2.6. Any Quotation shall not constitute an offer and is only valid for a period of two Business Days from its date of issue (unless previously withdrawn in writing by the Customer). (Without limitation thereto the provision of a Quotation does not guarantee the availability of any Equipment, Vehicles, Goods or Supplier Personnel referred to therein.)
- 3. Hire Period**
- 3.1. The minimum Hire Period shall be one day.
- 3.2. Hire Periods may be extended by agreement between the parties, subject always to the availability of the Equipment and the Customer's payment (or agreement to pay) of all additional hire charges.
- 4. Delivery and Return**
- 4.1. The provisions of this clause 4 apply to the delivery of Equipment where no Vehicles are hired by the Customer.
- 4.2. Delivery of the Equipment be made by the Supplier at the time and date specified in the Quotation. Delivery shall take place by the Supplier making the Equipment available for collection at the Supplier's premises unless the Supplier has expressly agreed in writing to deliver the Equipment to such other location.
- 4.3. Any dates quoted for delivery of the Equipment are approximate only and the time of delivery is not of the essence.
- 4.4. Where delivery is to take place upon collection of the Equipment then, if the Customer fails to collect the Equipment at the time and date specified in the Quotation, delivery of the Equipment shall be deemed to have been completed at such time and date and the Hire Period shall be deemed to have commenced thereupon.
- 4.5. Where delivery is to take place upon collection of the Equipment then, subject to clause 4.3, if two Business Days after the day on which the Equipment should have been collected the Customer has not collected them the Supplier may terminate the Hire Period upon written notice to the Customer. In such event the Customer shall remain liable to pay Hire Charges for the Hire Period.
- 4.6. On the Termination Date the Customer will return the Equipment to the Supplier at the Supplier's premises.
- 5. Rates and Payment**
- 5.1. Hire Charges shall be payable for the entirety of the Hire Period whether or not the Equipment is in use for the whole of such Hire Period and shall be paid when specified in the Quotation.
- 5.2. The Customer shall be exclusively responsible for all VAT, customs and other duties and all related costs and expenses payable on any international transaction.
- 5.3. Without prejudice to the Supplier's other rights or remedies, the Customer shall pay interest at 3% per annum above the prevailing base rate of HSBC plc on all sums which may be due from the Customer to the Supplier under the Contract and remain unpaid, such interest being calculated from the due date until actual payment compounded quarterly and payable as well as before any judgment obtained in respect thereof.
- 5.4. If payment of the Hire Charges is due before Delivery, the Supplier shall have the right, at its option, to suspend delivery of Equipment, and/or Vehicles and/or Company Personnel and/or Goods and/or (if payment of the Hire Charges is due after Delivery) to require the Customer, to cease using the same until full payment (if due) is received whether a deposit has been paid or not.
- 5.5. Unless otherwise agreed by the Supplier in writing, the full Hire Charge is payable by the Supplier following acceptance of the Order and no reduction thereto shall be permitted in the event of any cancellation.
- 6. Inspection and Condition**
- 6.1. The Customer shall inspect and satisfy itself as to the condition and suitability of the Equipment before it is used by the Customer. Notwithstanding the foregoing, the use of the Equipment by or on behalf of the Customer shall be conclusive evidence that the Equipment is in satisfactory condition and good working order at the commencement of the Hire Period.
- 6.2. The Customer is responsible for returning the Equipment at the end of the Hire Period in the same condition as it was on Delivery (fair wear and tear only excepted).
- 6.3. Without limitation to the provisions of clause 6.2, in the event that the Customer does not comply with the provisions of clause 6.2 the Customer shall, at the Supplier's discretion, pay to the Supplier the lesser of the full replacement cost of the damaged Equipment or the cost of reinstating the Equipment to the condition it was in at the commencement of the Hire Period.
- 7. Insurance**
- 7.1. Risk in the Equipment shall pass to the Customer on Delivery and the Customer shall be responsible, for the duration of the Hire Period, for the cost of insuring all Equipment.
- 7.2. The Customer shall:
- 7.2.1. keep the Equipment insured for its full replacement value throughout the Hire Period against all risks of loss, damage by fire, theft (whether or not involving forcible or violent entry or exit to premises) and accident and against all other risks usually covered by comprehensive insurance of products of the type of the Equipment;
- 7.2.2. keep in place insurance for an amount of not less than £10 million to cover third party or public liability of whatever nature and however arising in connection with the Equipment;
- 7.2.3. take out and maintain insurance against loss suffered by the Customer resulting from any breakdown of or damage to the Equipment and against loss, damage or liability arising in connection with acts, omissions or default of Supplier Personnel in carrying out or incidental to their duties under the Contract.
- 7.3. The Customer shall produce to the Supplier on demand evidence of a current insurance policy in respect of the insurances referred to in clause 7.2.
- 7.4. The insurances referred to in clause 7.2 shall be free from unreasonable restrictions or excess.
- 7.5. The Customer shall not use or allow the Equipment to be used for any purpose or by any person not permitted by the terms and conditions of the policy of insurance put in place by the Customer in respect of the insurances referred to in clause 7.2 and shall not, for the duration of the Hire Period, do or omit to do any act or thing whereby such insurance would or may be vitiated or invalidated and/or jeopardise the prospect of a successful insurance claim in respect of any loss of or damage to the Equipment.
- 8. Intellectual Property Rights**
- 8.1. The Customer represents and warrants that no intellectual property rights (including without limitation copyright, trade marks, patents and moral rights) or other proprietary rights of any third party now in existence or hereafter created will be infringed by virtue of:
- 8.1.1. the Customer's use of the Equipment;
- 8.1.2. Any services or work carried out by Supplier Personnel at the request of the Customer;
- 8.1.3. the loading, storage, management, archiving, re-touching or manipulation of the Customer's images and other data by the Supplier.
- 9. Customer's Duties**
- 9.1. During the period of the Contract the Customer shall:
- 9.1.1. keep the Equipment in its custody and control and shall not loan, assign, pledge, encumber or part with possession of or suffer any lien to be created over the Equipment or any part thereof (unless otherwise agreed in writing by the Supplier);
- 9.1.2. ensure that the Equipment is used in a skilful and proper manner and only by persons having the appropriate qualifications and experience and who are familiar with the Equipment and not on any abnormal or hazardous occasion;
- 9.1.3. take proper care of the Equipment and ensure that it is properly stored and protected from interference and damage from any source whatsoever including inter alia the effect of the elements and interference from strangers;
- 9.1.4. not to take or allow any of the Equipment to be taken out of the United Kingdom mainland without the prior written authority of the Supplier, and in the event of that authority being given only on such terms as the Supplier deems fit.
- 9.2. The Customer shall fulfil its obligations under this Contract in compliance with all applicable laws and regulations, including all binding codes of conduct and judgments.
- 10. Replacement and Repairs**
- 10.1. The Customer shall at all reasonable times during the Hire Period permit the Supplier and its agents access to the Equipment to inspect, test, adjust, repair, alter or replace the same.
- 10.2. If at any time during the Hire Period the Equipment or any part thereof is in need of adjustment or repair or if there are any accidents or incidents in the Equipment or any part of then the Customer shall forthwith (at whatever time of night or day) give notice by telephone to the Supplier within 24 hours of the occurrence of any circumstance described in clause 10.2 of the problem with the Equipment.
- 10.3. The Supplier shall endeavour to carry out whatever repairs shall be necessary to the Equipment as soon as reasonably possible after such notification.
- 10.4. In the event that the repair is required as a result of any act or omission of the Customer, the Customer shall be liable for the costs of repair which shall include without limitation labour costs (which shall be charged at the Supplier's prevailing labour rates) any material costs and any ancillary costs such as transaction and re-delivery).
- 10.5. Save where there has been a breach of clause 13.3 by the Supplier, Hire Charges shall continue to be payable during the period of repair.
- 11. Vehicles**
- 11.1. Where any vehicle or vehicles ("the Vehicles") are hired the provisions of this clause shall apply.
- 11.2. The Customer may use the Vehicles for the storage and transportation of the Supplier's Equipment only. Any other use of the Vehicles, without the prior written consent of the Supplier, shall be a material breach of this Contract by the Customer.
- 11.3. Without prejudice to the generality of the foregoing, the Customer agrees that it will not:
- 11.3.1. without the prior consent of the Supplier effect any mechanical or other modification to the Vehicles, make any alterations or additions, fit any lowering equipment or other accessories, fit any non-standard tyres, and any such additions, alterations or modified parts which may be made shall be made at the cost of the Customer and shall become part of the Vehicles and shall belong to the Supplier;
- 11.3.2. remove or interfere with any identification marks or plates affixed to the Vehicles nor attempt to purport to do so nor permit the same or deface the paintwork or bodywork of the Vehicles nor add or erect any painting, sign-writing, lettering, or advertising to or on the Vehicles.
- 11.4. The Customer shall ensure the Hire Period:
- 11.4.1. ensure that the Vehicles are operated properly and safely by drivers who at all times hold valid and current driving licences in the appropriate classes;
- 11.4.2. not use or permit the Vehicles to be used or operated in a manner contrary to any statutory provisions or regulation or in any way contrary to law, having regard in particular (but without prejudice to the generality of the foregoing) to the regulations affecting maintenance and usage of tyres, tachographs and drivers' hours.
- 12. Services of Supplier Personnel**
- During any period when the services of Supplier Personnel are engaged by the Customer such Supplier Personnel shall be deemed to be the servants or agents of the Customer and the Customer shall be responsible for ensuring that all Supplier Personnel working on and the place and method of work and in particular (but without limitation) the Customer shall ensure that (a) all Supplier Personnel working at heights in excess of 2 metres (without guardrails or equivalent protection) or 15 metres (in any event) shall wear safety harnesses which shall be provided by the Customer; (b) drivers of Vehicles shall not exceed the maximum hours allowed by statute.
- 13. Sale of Goods**
- 13.1. The provisions of this clause shall apply to the sale of Goods whether or such sale is made in conjunction with the hire of Equipment or Supplier Personnel or otherwise.
- 13.2. The price of the Goods and the time for payment thereof shall be set out in the relevant Quotation.
- 13.3. Delivery of the Goods shall be made at the Supplier's address. Risk in the Goods shall pass to the Customer upon such delivery taking place. The Customer shall be deemed to have accepted the Goods if they are not returned to the Supplier within 24 hours (not used, lost or damaged by the Customer prior to that, then upon their first being so used, lost or damaged). After acceptance the Customer shall not be entitled to reject Goods which are not in accordance with the Contract. Where the Customer rejects any Goods then the Customer shall have no further rights whatever in respect of such Goods or the failure by the Supplier to supply goods which conform to the Contract.
- 13.4. If the Customer agrees in the Quotation to sell Goods on a sale or return basis then Customer shall be deemed to have accepted such Goods and agreed to purchase them upon their first being used, lost or damaged by the Customer or if they shall not have been returned to the Supplier within 24 hours after expiry or termination of the Hire Period.
- 13.5. Notwithstanding delivery and/or acceptance of the Goods, title in the Goods shall not pass from the Supplier until the Customer has paid the price for the Goods in full and no other sums whatever shall be due from the Customer to the Supplier.
- 13.6. Until title in the Goods passes to the Customer the Customer shall:
- 13.6.1. hold the Goods and each of them on a fiduciary basis as bailee for the Supplier. The Customer shall store the Goods (at no cost to the Supplier) separately from all other goods in its possession and marked in such a way that they are clearly identifiable as the Company's property.
- 13.6.2. the Customer shall not sell, lease, gift, assign or otherwise dispose of the Goods to the Supplier such that if the Customer fails to do so the Supplier may enter upon any premises owned occupied or controlled by the Customer where the Goods are situated and repossess the Goods.
- 14. Limitation of Liabilities**
- 14.1. Nothing in the Contract shall exclude or limit a party's liability for (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by its negligence; (c) any other liability which it is not permitted to exclude or limit.
- 14.2. The Supplier will not be liable to the Customer for any:
- 14.2.1. damage to the Equipment or Vehicle after the Vehicle has left the Company's premises;
- 14.2.2. consequential, indirect or special loss; and
- 14.2.3. loss of goodwill, loss of profit or economic loss.
- 14.3. Subject to (a) the provisions of clause 14.1 and 14.2, the aggregate liability of the Company in respect of breach of contract or breach of duty, tort or fault or negligence or otherwise whatsoever and/or howsoever arising out of or in connection with this Contract shall be limited to the amount of monies (whether by Hire Charges or otherwise) payable by the Customer to the Company pursuant to the Contract.
- 15. Indemnity**
- 15.1. In this clause, a reference to the Supplier shall include the Supplier's Personnel and the provisions of this clause shall be for the benefit of the Supplier and the Supplier's Personnel and shall be enforceable by each, in addition to the Supplier.
- 15.2. The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:
- 15.2.1. the Customer's breach or negligent performance or non-performance of the Contract;
- 15.2.2. any claim made against the Supplier by a third party arising out of or in connection with use of the Equipment, the supply of the Goods, the supply of Supplier's Personnel and the supply of the Vehicles other than where such claim arises out of the breach, negligent performance or failure or in performance of the Contract by the Supplier;
- 15.2.3. any claim made against the Supplier by a third party for death, personal injury or damage to the property arising out of or in connection with use of the Equipment, the supply of the Goods, the supply of Supplier Personnel and the supply of the Vehicles; and
- 15.2.4. any non-compliance or contravention of any transport, traffic or other law or regulation;
- 15.2.5. non-compliance with all health and safety legislation;
- 15.2.6. any loss or damage to the Equipment or Vehicles howsoever arising while the equipment is in the possession of the customer including but not limited to where such damage or loss results from the acts or omissions of the Supplier's Personnel;
- 15.2.7. proceedings or demands made by a third party in connection with or arising from any acts or omissions of the Supplier's Personnel, including injury and/or damage to, as applicable, any third party or such third party's property; and
- 15.2.8. proceedings or demands made by Supplier Personnel in connection with or arising from any act omission or default of the Customer under the Contract or otherwise.
- 16. Termination of Hire and Consequences of Termination**
- 16.1. Without affecting any other right or remedy available to the Customer, the Customer may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 16.1.1. the Customer fails to pay any amount due under this agreement on the due date for payment;
- 16.1.2. the Customer commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to notify that breach within a period of 14 days after being notified in writing to do so;
- 16.1.3. the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability 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 or (being an individual) is deemed either unable to pay its debts or having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 16.1.4. the Customer commences negotiations with all or any class of 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 management amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer);
- 16.1.5. a Petitioner 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 Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 16.1.6. 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 Customer (being a company);
- 16.1.7. the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 16.1.8. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- 16.1.9. the Customer (being an individual) is the subject of a bankruptcy petition or order;
- 16.1.10. a creditor or encumbrancer of the Customer 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 Customer's assets and such attachment or process is not discharged within 14 days;
- 16.1.11. the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 16.2. The Contract shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 16.3. Upon termination of the Contract, however caused:
- 16.3.1. the Supplier's consent to the Customer's possession of the Equipment shall terminate and the Supplier may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter into the site or any premises at which the Equipment is located; and
- 16.3.2. without prejudice to any other rights of the Customer, the Customer shall pay to the Supplier on demand:
- 16.3.2.1. all Hire Charges for the whole of the Hire Period and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.4;
- 16.3.2.2. any costs and expenses incurred by the Supplier in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 16.4. Upon termination of the Contract pursuant to clause 16.1, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand a sum equal to the whole of the Hire Charge that would (but for the termination) have been payable if the Contract had continued until the end of the Hire Period.
- 16.5. The sums payable pursuant to clause 16.4 shall be agreed compensation for the Supplier's loss and shall be payable in addition to the sums payable pursuant to clause 16.3.2.1. Such sums may be partly or wholly recovered from any deposit paid by the Customer.
- 16.6. Termination or expiry of the Contract shall not affect the Customer's 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.
- 17. Set Off**
- The Supplier may at any time set off any liability of the Customer against any liability of the Supplier to the Customer whether or either liability is present or future, liquidated or unliquidated and whether or not either liability arises under this agreement.
- 18. Miscellaneous**
- 18.1. The Contract, the Quotation, the Order and acknowledgement of Order constitute the entire understanding and agreement between the parties hereto and any variation shall be binding only if it is in writing signed on behalf of the Supplier. All implied terms, conditions and warranties are excluded to the extent permitted under law.
- 18.2. The Customer acknowledges that it has not relied upon or been induced to enter into this Contract by a representation, statement, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to the Customer in respect of any such statements, representation, warranty or understanding shall be for breach of Contract under the terms of this Contract.
- 18.3. Clauses 18.1 and 18.2 are not intended to limit the Company's liability in respect of a fraudulent misrepresentation under the terms of this Contract.
- 18.4. The waiver by the Supplier of any breach of the Contract shall not prevent the subsequent enforcement of the Contract and shall not be deemed a waiver of any subsequent breach.
- 18.5. The Supplier shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 18.6. Any notice under the Contract shall be in writing and the Contract sent by email transmission or prepaid first class post delivered to the address stated herein or to the last known address of the addressee. Service shall be deemed to be effective on the date of the email and in the case of posting on the day following the day of posting and any notice delivered to an address by hand shall be deemed to be effective from the date of such delivery.
- 18.7. The Contract and these Terms and Conditions and any disputes which may arise in conjunction with it, shall be governed in all respects by English Law and shall be subject to the exclusive jurisdiction of the English Courts.