

TERMS AND CONDITIONS OF HIRE

OF

Westermans International Ltd

1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 “Owner” means Westermans International Ltd of Unit 4 Midland Distribution Centre, Markfield Road, Groby, Leicester LE6 0FS UK;
- 1.2 “Hirer” means any person who makes an Agreement for Services with the Owner to include employees, agents, servants and/or subcontractors;
- 1.3 “Equipment” means all items belonging to the Owner and hired by the Hirer as specified in the Quotation or agreed between the parties;
- 1.4 “Consumables” means approved products required for use with the Equipment, if any, as outlined in the Quotation;
- 1.5 “Quotation” means a proposal, pricing offer or other similar document describing the Services as attached to these Terms and Conditions;
- 1.6 “Services” means the hire of Equipment as described in the Quotation;
- 1.7 “Site” means the location specified by the Hirer where the Equipment is to be used as described in the Quotation;
- 1.8 “Fees” means the payment due from the Hirer to the Owner for provision of the Services;
- 1.9 “Terms and Conditions” means the terms and conditions of supply of Services as set out in this document and any subsequent terms and conditions agreed in writing by the Owner;
- 1.10 “Agreement” means the contract between the Owner and the Hirer for the provision of the Services incorporating these Terms and Conditions.

2 GENERAL

- 2.1 These Terms and Conditions shall apply to the Agreement for the supply of Services by the Owner to the Hirer and shall supersede any other documentation or communication between parties.

- 2.2 Any variation to these Terms and Conditions must be agreed in writing by the Owner.
- 2.3 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Owner may be entitled in relation to the Services, by virtue of any statute, law or regulation.
- 2.4 Any reference in these Terms and Conditions to legislation, statute, regulation or provision thereof shall be construed as a reference to that legislation, statute, regulation or provision as amended, enacted or extended at the relevant time.

3 QUOTATION

- 3.1 The Quotation for Services is attached to these Terms and Conditions.
- 3.2 The Quotation for Services shall remain valid for a period of 14 days.
- 3.3 The Quotation must be accepted by the Hirer in its entirety.
- 3.4 The Agreement between the Owner and the Hirer, incorporating these Terms and Conditions, shall only come into force when the Owner confirms acceptance in writing to the Hirer.
- 3.5 Any typographical, clerical or other error or omission in any sales literature, quotation or price list, acceptance of offer, invoice, website or other document or information issued by the Owner shall be subject to correction without any liability on the part of the Owner.

4 SERVICES AND DELIVERY

- 4.1 The Services are as described in the Quotation.
- 4.2 Any variation to the Services must be agreed by the Owner in writing.
- 4.3 The Services shall commence on the start date specified in the Quotation and shall continue until the finish date specified in the Quotation or until terminated in terms of this Agreement.
- 4.4 The commencement of the Services is dependent on the Owner having adequate materials and labour available at the anticipated start date and the Hirer giving the Owner reasonable notice of the intention to require the Services.
- 4.5 The Services shall be carried out at the Site or any other location that the Owner agrees with the Hirer in writing.

- 4.6 The Hirer shall be responsible for collecting the Equipment from the Owner's premises and loading it and for returning and unloading it, unless otherwise agreed in writing in the Quotation. Where the Owner agrees to deliver and collect the Equipment, the Owner shall charge a reasonable price to be confirmed before delivery. Prior to delivery, the Owner shall ensure that the Equipment subject to hire is in good working order.
- 4.7 Dates given for the delivery of Services are estimates only and not guaranteed. Time for delivery shall not be of the essence of the Agreement and the Owner shall not be held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery.
- 4.8 The Owner reserves the right to make any changes to the specification of the Equipment as described in the original Quotation which may be required to conform to any safety or other statutory obligations that become applicable.

5 FEES

- 5.1 The price for Services is as specified in the Quotation and is exclusive of VAT and any other charges as outlined in the Quotation.
- 5.2 The terms for payment are as specified in the Quotation.
- 5.3 A Deposit as specified in the Quotation shall be payable by the Hirer to the Owner in advance of the provision of the Services to be held as security by the Owner for the duration of the Agreement. On termination of the Agreement the Deposit shall be refundable in full to the Hirer less any amounts deducted to cover damage, loss, payments due or other costs covered by this Agreement.
- 5.4 The Hirer must settle all payments for Services within 30 from the invoice date unless otherwise stated on the quotation.
- 5.5 The Hirer will pay interest on all late payments at a rate of 2.4% per annum above the base lending rate of NatWest Bank plc.
- 5.6 The Owner is entitled to recover all reasonable expenses incurred in obtaining payment from the Hirer where any payment due to the Owner is late.
- 5.7 The Hirer is not entitled to withhold any monies due to the Owner.
- 5.8 The Owner is entitled to vary the price to take account of:
- 5.8.1 any additional Services requested by the Hirer which were not included in the original Quotation;
 - 5.8.2 any additional work required to complete the Services which was not anticipated at the time of the Quotation;
 - 5.8.3 any reasonable increase in transport costs, materials or equipment required by the Owner to provide the Services;

and any variation must be intimated to the Hirer in writing by the Owner.

- 5.9 Fees are quoted on the understanding that the Services shall be provided during normal working hours. Should the Hirer request the Services be provided outwith these times then additional charges to cover over-time or anti-social working hours shall be payable in addition to the quoted Fees.
- 5.10 Should the Hirer fail to pay the Fees in accordance with these Terms and Conditions the Owner is entitled to remove all Equipment from the Site without notice.
- 5.11 The period of hire is as detailed in the Quotation and no credit will be given or monies refunded by the Owner to the Hirer if the Hirer deems not to require the Equipment for the agreed time.
- 5.12 Cancelled orders are subject to a charge of 10% of one weeks hire term.
- 5.13 Amendments to orders may be made within 48 hours of the date for delivery or collection.

6 HIRER'S OBLIGATIONS

- 6.1 The Hirer agrees to cooperate with the Owner at all times.
- 6.2 The Hirer shall not permit any other person to use the Equipment without the express permission of the Owner.
- 6.3 The Hirer must not use the Equipment outside the UK without the permission of the Owner.
- 6.4 The Hirer must check the Equipment at the start of the period of hire and report any faults within 24 hours. Any defective Equipment will be replaced upon its return and no charge will be made for the first 24 hours. Where the Owner delivered the Equipment the Owner will collect the defective Equipment.
- 6.5 The Hirer must use the Equipment in a skillful and proper manner and not use the Equipment for any purpose beyond its capacity.
- 6.6 The Hirer shall maintain adequate insurance policies to cover all liabilities as set out in these Terms and Conditions.
- 6.7 During the period of hire, the Hirer must keep the Equipment properly maintained and repaired and ensure its security and safekeeping.
- 6.8 The Hirer must read any relevant operating and safety instructions supplied with the Equipment and only use the Equipment or fit any accessories in accordance with those instructions.
- 6.9 The Hirer shall ensure that the correct voltage is used for any electrical machinery hired as Equipment.
- 6.10 The Hirer shall ensure that the correct fuel is used in any machinery hired as Equipment where appropriate.

- 6.11 The Hirer must immediately inform the Owner of any breakdown of the Equipment or any problem affecting the working of the Equipment and return such Equipment as soon as possible to allow the Owner to repair or exchange it. In the case where the Owner delivered the Equipment, the Hirer must notify the Owner of a suitable time when the Owner may collect the Equipment for repair or exchange. No charge shall be made for the hire of the Equipment during the period that it is not in working order. The Owner shall be entitled to replace the Equipment with equipment of a similar type where the Equipment has broken down and is not immediately repairable. Where no replacement equipment is immediately available or where the replacement equipment is not satisfactory the Hirer will be entitled to terminate the hire and claim for a refund for the period during which the Equipment was out of order or may hire replacement equipment at dates to be agreed in the future;
- 6.12 The Hirer shall allow the Owner access to inspect the Equipment upon reasonable notice at any time;
- 6.13 Unless otherwise agreed in writing by the Owner, the Hirer must keep the Equipment in its own possession at the Site;
- 6.14 The Hirer must return the Equipment in the same condition as when it was supplied to the Hirer, reasonable wear and tear excepted. The Owner shall be allowed to charge for the cleaning and/or restoration of any Equipment not returned in a good and proper condition.
- 6.15 The Hirer shall not be liable to pay the Owner for any loss, theft or damage to the Equipment where reasonable efforts have been made by the Hirer to look after it or where damage arises due to the poor quality of the Equipment. Where any loss, damage or theft occurs because the Hirer has failed to look after the Equipment the Hirer will pay the Owner the cost of the Equipment on a 'new for old' basis according to the current list price.
- 6.16 The Hirer must inform the Owner immediately of any accident involving the Equipment resulting in injury to persons or damage to property.
- 6.17 The Hirer must inform the Owner immediately of any loss, theft or damage to the Equipment. The Hirer shall be charged for the hire of the Equipment until the Owner is notified that the Hirer is no longer able to use it.
- 6.18 The Hirer must assist the Owner and its insurers as far as reasonably possible where there is any loss, theft or damage to the Equipment, including reporting any theft to the police.
- 6.19 The Hirer must not repair the Equipment without the prior written consent of the Owner.
- 6.20 The Hirer agrees to pay solicitors fees and court costs involved on behalf of the Owner in having to take any legal action to recover either the Equipment, the value of the Equipment or repair costs through the Hirer not complying with the terms and conditions of hire. This also applies to any outstanding Fees accrued in this period.

7 OWNER OBLIGATIONS

- 7.1 The Owner shall supply the Services as specified in the Quotation and in these Terms and Conditions.
- 7.2 The Owner shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice.
- 7.3 The Owner shall have the authority to delegate any obligations to other employees or subcontractors but undertakes to notify the Hirer of any significant changes.
- 7.4 The Owner shall ensure that the Equipment is sound and adequate for the purpose requested by the Hirer. Actual colours, style, capacity or dimensions may vary from descriptions in promotional literature, websites, catalogues or order forms.
- 7.5 The Owner shall ensure that the Equipment meets all statutory obligations and industry guidelines.
- 7.6 The Owner shall maintain appropriate insurance policies to cover the provision of the Services.

8 EQUIPMENT

- 8.1 Title to the Equipment remains with the Owner at all times. The Hirer has no right, title or interest in the Equipment except that it is hired to the Hirer for the period of the Services.
- 8.2 The Hirer must not deal with the title or any interest in the Equipment hired. This includes, but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, exercising a lien and/or lending.
- 8.3 In the event of any default of this Agreement on the part of the Hirer the Owner is entitled to resume possession of the Equipment.
- 8.4 Risk in the Equipment passes immediately to the Hirer when the Equipment leaves the possession of the Owner.
- 8.5 Risk in the Equipment will not pass back to the Owner from the Hirer until the Equipment is back in the physical possession of the Owner. This shall apply even if the Owner has agreed to cease charging for the hire of the Equipment.

9 TERMINATION

- 9.1 In respect of Services provided for a fixed period as specified in the Quotation the Agreement shall continue until the Services have been provided in terms of the said Quotation or any subsequent date as mutually agreed in writing by both parties or until terminated by either party in accordance with these Terms and Conditions.

- 9.2 In respect of Services provided for no fixed duration either party is entitled to terminate the Agreement on giving 48 hours notice.
- 9.3 The Hirer may terminate the Agreement if the Owner fails to comply with any aspect of these Terms and Conditions and this failure continues for a period of 14 days after notification of non-compliance is given.
- 9.4 The Owner may terminate the Agreement if the Client has failed to make over any payment due within 8 weeks of the sum being requested.
- 9.5 The Owner may terminate the Agreement if the Hirer, or any contractors engaged by them, cause such delay as to render the Owner unable to provide the Services for an unreasonable period of time.
- 9.6 Either party may terminate the Agreement by notice in writing to the other if:
- 9.6.1 the other party commits a material breach of these Terms and Conditions and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
 - 9.6.2 the other party commits a material breach of these Terms and Conditions which cannot be remedied under any circumstances; or
 - 9.6.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
 - 9.6.4 the other party ceases to carry on its business or substantially the whole of its business; or
 - 9.6.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 9.7 In the event of termination the Hirer must make over to the Owner any expenses incurred up to the date of termination.
- 9.8 Any rights to terminate the Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of the Agreement as at the date of termination.

10 WARRANTY

Both parties warrant their authority to enter into this Agreement and have obtained all necessary approvals to do so.

11 LIMITATION OF LIABILITY

- 11.1 Nothing in these Terms and Conditions shall exclude or limit the liability of the Owner for death or personal injury, however the Owner shall not be liable for any direct loss or damage suffered by the Hirer howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the price of the Services.
- 11.2 The Owner shall not be liable under any circumstances to the Hirer or any third party for any indirect or consequential loss of profit, consequential or other economic loss suffered by the Hirer howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise.
- 11.3 For the avoidance of doubt, time shall not be of the essence and the Owner shall incur no liability to the Hirer in respect of any failure to complete the Services by any agreed completion date.
- 11.4 The Owner shall have no liability for additional damage, loss, liability, claims, costs or expenses, caused or contributed to by the Hirer's continued use of defective Equipment after a defect has become apparent or suspected or should reasonably have been so to the Hirer.

12 INDEMNITY

- 12.1 Subject to these Terms and Conditions the Hirer shall wholly indemnify the Owner in respect of all claims from any source at any time during the Agreement where any injury or death to persons, damage to property, or loss or damage is caused by, or arises out of, the misuse of Equipment by any person other than the Owner or their employees.
- 12.2 Subject to these Terms and Conditions the Owner shall indemnify the Hirer against all sums for which the Hirer shall become liable for damages or compensation for bodily injury to or death of any person or for damage to any property real or personal provided the same be caused by the Owner in carrying out the work provided nevertheless that the Owner shall be entitled to conduct in the name of the Hirer and to control all claims or proceedings. In the event of such circumstances the Owner must be notified within seven (7) days of the injury, death or damage becoming apparent to the Hirer.

13 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

14 ASSIGNMENT

The Hirer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Owner.

15 RELATIONSHIP OF PARTIES

Nothing in the Agreement shall be construed as establishing or implying a partnership or joint venture between the parties or suggest that either of the parties are agent for the other.

16 THIRD PARTY RIGHTS

Nothing in these Terms and Conditions intend to or confer any rights on a third party.

17 SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

18 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions.

19 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Quotation or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

20 ENTIRE AGREEMENT

These Terms and Conditions supersede any previous agreements, arrangements, documents or other undertakings either written or oral.

21 GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.