

INTERPRETATION

1.1 In these conditions the following words have the following meanings:
"Charges" means our current hire charges from time to time including any charges for the Services during the Hire Period and/or any charges for the sale of the Products or supply of Services (as appropriate);
"Contract" means a contract created by the acceptance of the Order and which incorporates these conditions and any special conditions detailed in the Order made between you and us for the hire of the Equipment, the provision of the Services and/or the sale of Products;
"Deposit" means any advance payment required by us in relation to cash hires for the Equipment which is to be held as security by us;
"Equipment" means the equipment detailed in the Order together with a whole and any accessories hired by you as specified in a Contract;
"Force Majeure" means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events;
"Hire Period" means the period commencing when you hold the Equipment on hire (including Saturdays, Sundays and Bank Holidays) and ending upon the happening of any of the following events (i) you return the Equipment to our possession; or (ii) we repossess or collect the Equipment;
"Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs (including but without limitation all legal costs and disbursements) and any other losses and/or liabilities;
"Order" means the purchase order containing the details of the Contract;
"Products" means the products sold by us to you;
"Services" means the services and/or work (if any) to be performed by us for you whether in conjunction with the hire of Equipment (including any delivery and/or collection service for the Equipment) or otherwise;
"we/us/our" means Metnor (Great Yarmouth) Ltd and will include its employees, servants, agents and/or duly authorised representatives;
"you" means the person, firm, company or other organisation hiring the Equipment and/or purchasing the Products.

2. BASIS OF CONTRACT

2.1 These conditions shall be incorporated in all Contracts and shall be the sole conditions under which the hire of Equipment, provision of the Services and sale of the Products takes place. All other terms, conditions and other representations are excluded from the Contracts between you and us including any terms and conditions which you may purport to apply under any Contract and these terms and conditions shall prevail.

2.2 Our employees or agents are not authorised to make any representations concerning the Equipment and/or Products unless confirmed in writing and any advice or recommendation given by us to you as to the storage, application or use of the Equipment and/or Products which is not confirmed in writing is followed or acted upon entirely at your own risk.

2.3 We reserve the right to provide Equipment and/or Products similar or comparable to that ordered by you.

2.4 The Contract shall become binding when we have acknowledged the order to you either verbally or in writing as appropriate. These conditions shall be applicable to all repeat orders made by you unless we notify you otherwise.

2.5 The Equipment is hired subject to it being available for hire at the time you request it. We will not be liable for any loss suffered by you as a result of the Equipment being unavailable for hire.

2.6 You shall obtain and comply with all permissions, consents and licences required for the Equipment under any statute, regulation or byelaw.

3. PAYMENT

3.1 The amount of any Deposit and Charges are detailed in the Order and are based on our current price list from time to time.

3.2 Where a Deposit is required for the Equipment it must be paid before you hire the Equipment.

3.3 You shall pay the Charges from (i) the date the Equipment is dispatched if the destination is outside the UK or (ii) the date you receive the Equipment at a stated destination within the UK, and will continue paying the Charges during the Hire Period until we are in physical possession of the returned Equipment, and the Equipment is in a clean and serviceable condition. All time during the Hire Period is chargeable and the Charges may be payable on Saturdays, Sundays and Bank Holidays (as appropriate).

3.4 If we are unable to collect the Equipment for any reason whatsoever the Charges shall continue to be payable in accordance with the Contract. Any signature provided by your employees, agents, or representatives shall be deemed to be an authorized signature for and on your behalf for the purpose of the Contract.

3.5 Where a credit account has not been granted, payment of the Charges shall be made with your order for the Equipment or purchase of the Products. Otherwise, payment of any Charges or any other sums due under this Contract shall be made in full and cleared funds by the end of the following month from the month in the date of the invoice, unless written approval has been given for extended terms upon application for credit.

3.6 All Charges are, unless otherwise stated, exclusive of any applicable VAT.

3.7 Prompt payment under a Contract shall be of the essence. Payment shall not be deemed to be made until we have received either cash or cleared funds in respect of the full amount outstanding.

3.8 Without prejudice to any of our other rights, if you fail to make any payment in full on the due date we may charge you interest (both before and after judgment) on the amount unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 and/or to suspend further Services to you.

3.9 You shall pay all sums due to us under this Contract without any setoff, deduction, counterclaim and/or any other withholding of monies.

3.10 We may set a reasonable credit limit for you. We reserve the right to terminate or suspend the Contract for hire of the Equipment and/or the provision of Services if allowing it to continue would result in you exceeding your credit limit or you have already exceeded the credit limit.

4. RISK, OWNERSHIP AND INSURANCE

4.1 Risk in the Equipment and/or Products will pass to you immediately when the Equipment leaves our physical possession or control.

4.2 Risk in the Equipment will not pass back to us from you until the Equipment is returned to our physical possession.

4.3 Ownership of the Equipment remains with us at all times. You have no right, title or interest in the Equipment except that it is hired to you.

4.4 Ownership of any Products remains with us until all monies payable by you under the Contract or any other contract between us and you have been paid in full and cleared funds.

4.5 You must not deal with the ownership or any interest in the Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending.

4.6 The Equipment must have been operated in accordance with the instructions and all reasonable steps must have been taken to prevent accidental damage to the Equipment.

5. DELIVERY, COLLECTION AND SERVICES

5.1 You shall collect the Equipment from us and return it to us at the end of the Hire Period. If we agree to deliver or collect the Equipment to and/or from you, we will charge our standard delivery cost from time to time.

5.2 Where we provide the Services relating to the hire of Equipment the persons performing the Services are your responsibility. You shall be solely responsible for any damage which occurs as a result of such persons following your instructions during the Hire Period, except to the extent that the persons performing the Services are negligent.

5.3 You will allow and/or procure sufficient access to and from the relevant site and procure sufficient loading space, facilities, equipment and access to power supplies and utilities for our employees, sub-contractors and/or agents to allow them to carry out the Services. You will ensure that the site where the Services are to be performed is cleared and prepared before the Services are due to commence.

5.4 You shall provide suitable access route for delivery and collection of the Equipment with unrestricted entry and approach.

5.5 If any Services are delayed, postponed and/or cancelled due to your failure to comply with your obligations under the Contract, you will be liable to pay additional standard charges from time to time for such delay, postponement and/or cancellation except where the delay is due to Force Majeure.

6. CARE OF EQUIPMENT

6.1 You shall:

6.1.1 not deface or remove any labels from and/or interfere with the Equipment, their working mechanisms or any other parts of them;

6.1.2 take reasonable care of the Equipment and keep them properly maintained and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided to or supplied to you and any applicable law or regulations (including any Institution of Electrical Engineers (IEE) regulations);

6.1.3 notify us immediately and in any event within 24 hours after any breakdown, loss and/or damage to the Equipment or of any accident resulting in death, personal injury or damage to property;

6.1.4 take adequate and proper measures to protect the Equipment from theft, damage and/or other risks;

6.1.5 notify us of any change of your address and upon our request provide details of the location of the Equipment;

6.1.6 permit us at all reasonable times to inspect the Equipment including procuring access to any property where the Equipment is situated;

6.1.7 keep the Equipment at all times in your possession and control and not to remove the Equipment from the United Kingdom without our prior written consent;

6.1.8 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Equipment required by any legislation, best practice and/or operating instructions, except to the extent that we have agreed to provide them as part of any Services;

6.1.9 not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Equipment;

6.1.10 not continue to use Equipment where it has been damaged;

6.1.11 where the Equipment requires fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Equipment is properly installed by a qualified and competent person.

6.2 You must return the Equipment in good working order and condition (fair wear and tear excepted) in a clean condition together with all licences, registration and other documents relating to the Equipment.

6.3 It is your responsibility to check the calibration of the Equipment on each occasion before use. Final determination of the suitability of the Equipment for your specific use is your responsibility and you must assume all risk and liability in this regard.

7. BREAKDOWN

7.1 Allowance will be made in relation to the Charges for any non-use of the Equipment due to breakdown caused by the development of an inherent fault and/or fair wear and tear provided that you inform us as soon as practicable of the breakdown.

7.2 You shall be responsible for all expenses, loss (including loss of Charges) and/or damage suffered by us arising from any breakdown of the Equipment due to your negligence, misdirection and/or misuse of the Equipment.

7.3 We will, at our own cost, carry out all routine maintenance and repairs to the Equipment during the Hire Period (but you agree that you are responsible for applying all lubricating oils and other maintenance detailed in the operating instructions) and all repairs which are required due to fair wear and tear and/or an inherent fault in the Equipment.

7.4 You will be responsible for the cost of all repairs necessary to Equipment during the Hire Period which arise otherwise than under Section 7.3 above.

7.5 You must not repair or attempt to repair the Equipment without our prior written consent.

8. LOSS OR DAMAGE TO THE HIRED GOODS

8.1 If the Equipment is returned in damaged, unclean and/or defective state (except where due to fair wear and tear and/or an inherent fault in the Equipment) you shall be liable to pay us for the cost of any repair and/or cleaning required to return the Equipment to a condition fit for rehire.

8.2 You will pay to us the replacement cost of any Equipment (on a new for old basis) which is lost, stolen and/or damaged beyond economic repair during the Hire Period

8.3 You will pay to us our costs which we may incur in tracking or recovering any lost or stolen Equipment.

8.4 You shall pay the Charges for the Equipment up to and including the date you notify us that the Equipment has been lost, stolen and/or damaged beyond economic repair. From that date until we have replaced such Equipment (or retrieved any lost or stolen Equipment), you shall pay, as a genuine pre-estimate of lost Charges profit, a sum as liquidated damages being equal to two thirds of the Charges that would have applied for such Equipment for that period. We shall use our reasonable commercial endeavours to purchase replacements for such Equipment as quickly as possible using the monies paid under Section 8.2.

9. TERMINATION BY NOTICE

9.1 If the Hire Period has a fixed duration, subject to the provisions of Section 10 neither party shall be entitled to terminate the Contract before the expiry of that fixed period unless by agreement.

9.2 If the Hire Period does not have a fixed duration either party may terminate the Contract upon giving to the other party any agreed period of notice.

10. DEFAULT

10.1 If you:

10.1.1 fail to make any payment to us when due; or

10.1.2 breach the terms of the Contract and, where the breach is capable of remedy, have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

10.1.3 persistently breach the terms of the Contract;

10.1.4 provide incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

10.1.5 attempt to pledge, charge or create any form of security over any Equipment;

10.1.6 cease or threaten to cease to carry on business;

10.1.7 being a company, enter into voluntary or compulsory liquidation, have an administrator or administrative receiver appointed over all or any of your assets, or compound with or come to an arrangement with your creditors or enter into a company voluntary arrangement, any attachment order is made against you, any distress, execution or other legal process is levied on any of your property or you suffer any similar action in any jurisdiction;

10.1.8 have circumstances in which we reasonably believe that any of the events mentioned in Sections 10.1.7 above is about to occur and we notify you of this belief;

10.1.9 appear reasonably to us due to your credit rating to be financially inadequate to meet your obligations under the Contract;

10.1.10 appear reasonably to us to be about to suffer any of the above events; then we shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in Section 10.2 below.

10.2 If any of the events set out in Section 10.1 above occurs in relation to you then:-

10.2.1 we may enter, without prior notice, any of your premises (or premises of third parties with their consent) where the Equipment and/or Products may be and repossess any Equipment and/or Products;

10.2.2 we may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract between you and us;

10.2.3 we may immediately cancel, terminate and/or suspend without Liability to you the Contract and/or any other contract between you and us;

10.2.4 any credit period in relation to payment of the Charges shall be accelerated and all sums, all monies owed by you to us under this Contract or any other Contract between you and us shall immediately become due and payable.

10.3 Any repossession of the Equipment and/or Products shall not affect our right to recover from you any monies due under the Contract or any other contract between you and us and/or any damages in respect of any breach which occurred prior to repossession of the Equipment and/or Products.

10.4 Upon termination of the Contract you shall immediately:

10.4.1 at your expense, return the Equipment to us or make the Equipment available for us to collect; and

10.4.2 pay to us in full and cleared funds, all outstanding Charges and/or any other sums payable under the Contract or any other contract between us and you.

11. LIMITATION OF LIABILITY

11.1 All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.

11.2 Any defective Equipment and/or Products must be returned to us at your expense for inspection before we have any Liability for defective Equipment and/or Products.

11.3 We shall have no Liability to you if any Charges or monies due in respect of the Equipment, the Services and/or the Products have not been paid in full and cleared funds by the due date for payment.

11.4 We shall have no Liability resulting from or contributed to by your continued use of defective Equipment and/or Products after a defect has become apparent or suspected or should reasonably have become apparent to you.

11.5 We shall have no Liability to you for any:-

11.5.1 losses whether arising from breach of contract, tort (including but not limited to negligence), or otherwise, and whether flowing naturally and directly from such breach, negligence or other cause, or not, for:

(a) loss of revenue;

(b) loss of profit;

(c) loss of anticipated saving;

(d) loss of goodwill; or

(e) loss of reputation;

11.5.2 economic and/or other similar losses;

11.5.3 special damages, indirect losses and/or consequential losses; and/or

11.5.4 business interruption, loss of business, contracts and/or opportunity.

11.6 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

11.6.1 Liability for breach of contract;

11.6.2 Liability in tort (including negligence); and

11.6.3 Liability for breach of statutory and/or common law duty.

11.7 Nothing in this Contract shall exclude or limit our Liability for death or personal injury due to our negligence nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

12. GENERAL

12.1 Upon termination of the Contract the provisions of Sections 3.3, 3.8, 3.9, 8.1, 8.2, 8.3 and Section 6 shall continue in full force and effect.

12.2 The hiring of each piece of Equipment in the relevant Hire Period shall form a distinct Contract which shall be separate to any other Contract relating to other Equipment.

12.3 You shall be liable for the acts and/or omissions of your employees, agents, servants and/or sub-contractors as though they were your own acts and/or omissions under this Contract.

12.4 You shall be responsible for compliance with all relevant legislation and regulations issued by Government or local authorities, including (but not limited to) regulations under the Factories Acts, Health and Safety at Work Act.

In light of the COSHH regulations, we are obliged to request that you supply us with details of any chemical substance which has been used in our hire equipment, or in equipment returned to us for repair. This information should be supplied with the equipment when it is sent back to us so that we may safely deal with any residues remaining. This is of particular importance for pumps which have been used for chemical injection or any equipment which has been used with mercury. If you are able to supply a hazard data sheet for the substance this would be very useful or failing that the name of the hazardous substance so that we may identify it and deal with it accordingly. Failure to supply such information will result in your being deemed to have used no substances in the operation of the apparatus that are in anyway subject to the said regulations.

12.5 You agree to indemnify and keep indemnified us against any Liability suffered by us and arising from or due to your breach of contract, tort (including negligence) and/or any breach of statutory duty and/or any claim from a third party for injury to person or property arising from your use or storage of the Equipment.

12.6 No waiver by us of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

12.7 If any provision of the Contract is held by any competent authority to be unenforceable, in whole or in part, the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

12.8 We shall have no Liability to you for any delay and/or non-performance of a Contract to the extent that such delay is due to Force Majeure. If we are affected by Force Majeure then time for performance of our obligations under the Contract shall be extended for a period equal to the period of the delayed performance.

12.9 These terms and conditions supersede and replace all prior terms and conditions, communications, representations, warranties, stipulations, undertakings, and agreements whether oral or written between the parties.

12.10 All third party rights are excluded and no third parties shall have any rights to enforce the Contract.

12.11 This Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts in relation to any matter or dispute arising out of or in connection with it (whether of a contractual or tortious nature or otherwise).

12.12 We have the right to vary the Contract, by giving you 7 days written notice of such variation.