

The Lessee's attention is drawn in particular to the provisions of clause 8.

1. Interpretation

1.1 Definitions

In these Conditions the following definitions apply:

"**Business Day**" a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"**Commencement Date**" the date that the Lessee takes Delivery of the Equipment.

"**Conditions**" the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6

"**Contract**" the contract between the Lessor and the Lessee for the hire of the Equipment in accordance with these Conditions.

"**Delivery**" the transfer of physical possession of the Equipment to the Lessee at the Site.

"**Equipment**" the items of equipment listed in the Order and all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

"**Lessee**" the person or firm who hires the Equipment from the Lessor.

"**Lessor**" Barcare Supreme Limited registered in England and Wales under number 03976299.

"**Order**" the Lessee's order for the hire of the Equipment as set out in the Lessee's order form, the Lessee's written acceptance of the Lessor's quotation, or overlaid as the case may be.

"**Site**" the Lessee's premises as set out in the Order.

"**Rental Payments**" the payments made by or on behalf of Lessee for hire of the Equipment.

"**Rental Period**" the period of hire as set out in clause 3.

"**Total Loss**" due to the Lessee's default the Equipment is, or in the Lessor's reasonable opinion or the opinion of its insurer(s) is, damaged beyond repair, lost, stolen, seized or confiscated.

1.2 Construction

In these Conditions the following rules apply:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** does not include faxes but shall include emails.

2. Equipment Hire

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Lessee seeks to impose or incorporate, or which are implied by trade, custom or practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to hire the Equipment in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Lessee acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Lessor which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions, illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Equipment given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.7 The Lessor shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Lessee's quiet possession of the Equipment.

3. Rental Period

The Rental Period starts on the Commencement Date and shall continue until the Contract is terminated in accordance with these Conditions.

4. Rental Payments

4.1 The Lessee shall pay the Rental Payments to the Lessor monthly in advance in full and in cleared funds on the first day of the month and to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

4.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee to the Lessor on receipt of a valid VAT invoice at the rate and in the manner from time to time prescribed by law.

4.3 All payments to be made by either party under the Contract shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.

4.4 If the Lessee fails to pay any Rental Payments or any other sums payable under the Contract by the due date for payment under the Contract then, without limiting the Lessor's rights under clause 10.1, the Lessee shall pay interest on such sums for the period from and including the due date of payment up to the actual date of payment, whether before or after judgment. The interest shall be paid at whichever is the greater of (1) 10% per annum or (2) the rate of 4% per cent per annum above the base rate from time to time of Barclay's Bank.

5. Delivery and Installation

5.1 Delivery of the Equipment shall be made by the Lessor. The Lessor shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. Title and risk shall transfer in accordance with clause 6 of these Conditions. Time of delivery is not of the essence.

5.2 The Lessor shall at the Lessee's expense install the Equipment at the Site. The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that the Lessee has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Lessor, the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.

5.3 The Lessor may invoice the Lessee for the installation of the Equipment on or at any time after the completion of the installation. The Lessee shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Lessor. Time of payment is of the essence.

5.4 To facilitate Delivery and installation, the Lessee shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and installation to be carried out safely and expeditiously.

6. Title, Risk and Insurance

6.1 The Equipment shall at all times remain the property of the Lessor, and the Lessee shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the Conditions).

6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on Delivery. The Equipment shall remain at the sole risk of the Lessee during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Lessee ("Risk Period") until such time as the Equipment is redelivered to the Lessor. During the Rental Period and the Risk Period, the Lessee shall, at its own expense, obtain and maintain with a reputable insurer the following insurances:

6.2.1 insurance of the 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 the Lessor may from time to time nominate in writing;

6.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Lessor may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and

6.2.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Lessor may from time to time consider reasonably necessary and advise to the Lessee.

6.3 All insurance policies procured by the Lessee shall be endorsed to provide the Lessor with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Lessor's request name the Lessor on the policies as a loss payee in relation to any claim relating to the Equipment. The Lessee shall be responsible for paying any deductibles due on any claims under such insurance policies.

6.4 The Lessee shall give immediate written notice to the Lessor in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Lessee's possession or use of the Equipment.

6.5 If the Lessee fails to effect or maintain any of the insurances required under the Contract, the Lessor shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Lessee.

6.6 The Lessee shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Lessor and proof of premium payment to the Lessor to confirm the insurance arrangements.

7. Lessee's Responsibilities

7.1 The Lessee shall during the term of the Contract:

7.1.1 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions.

7.1.2 take such steps (including compliance with all safety and usage instructions provided by the Lessor) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

7.1.3 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date;

7.1.4 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Lessor. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Lessor immediately upon installation;

7.1.5 keep the Lessor fully informed of all material matters relating to the Equipment;

7.1.6 keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without the Lessor's prior written consent;

7.1.7 permit the Lessor or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;

7.1.8 not, without the prior written consent of the Lessor, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

7.1.9 not without the prior written consent of the Lessor, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Lessee shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Lessor against all losses, costs or expenses incurred as a result of such affixation or removal;

7.1.10 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Lessor in the Equipment and, where the Equipment has become affixed to any land or building, the Lessee must take all necessary steps to ensure that the Lessor may enter such land or building and recover the Equipment both during the

term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Lessor of any rights such person may have or acquire in the Equipment and a right for the Lessor to enter onto such land or building to remove the Equipment;

7.1.11 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Lessee shall notify the Lessor and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Lessor on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

7.1.12 not use the Equipment for any unlawful purpose;

7.1.13 ensure that at all times the Equipment remains identifiable as being the Lessor's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;

7.1.14 deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract at such address as the Lessor requires, or if necessary allow the Lessor or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and

7.1.15 not do or permit to be done anything which could invalidate the insurances referred to in clause 6.

7.2 The Lessee acknowledges that the Lessor shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Lessee or its officers, employees, agents and contractors, and the Lessee undertakes to indemnify the Lessor 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 the Lessee to comply with the terms of the Contract.

8. Warranties

8.1 The Lessor warrants that the Equipment shall substantially conform to its description, be of satisfactory quality and fit for any purpose held out by the Lessor. The Lessor shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period including, at the Lessor's sole discretion, replacing the Equipment, provided that:

8.1.1 the Lessee notifies the Lessor of any defect in writing within ten (10) Business Days of the defect;

8.1.2 the Lessor is permitted to make a full examination of the alleged defect;

8.1.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Lessor's authorised personnel;

8.1.4 the defect did not arise out of any information, design or any other assistance supplied or furnished by the Lessee or on its behalf; and

8.1.5 the defect is directly attributable to defective material, workmanship or design.

8.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Lessor, the Lessee shall be entitled only to such warranty or other benefit as the Lessor has received from the manufacturer.

9. Limitation of Liability

9.1 Nothing in these Conditions shall limit or exclude the Lessor's liability for:

9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

9.1.2 fraud or fraudulent misrepresentation;

9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

9.1.4 defective products under the Consumer Protection Act 1987; or

9.1.5 any matter in respect of which it would be unlawful for the Lessor to exclude or restrict liability.

9.2 Subject to clause 9.1:

9.2.1 the Lessor shall under no circumstances whatever be liable to the Lessee, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

9.2.2 the Lessor's total liability to the Lessee in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount of sums payable by the Lessee under the Contract.

10. Termination

10.1 Either party may terminate the Contract by giving to the other party no less than five (5) Business Days written notice.

10.2 The Lessor may, without prejudice to any other right or remedy which may be available to it, terminate the Contract immediately by notice to the Lessee if:

10.2.1 the Lessee defaults in any of its payment obligations;

10.2.2 the Lessee commits a material breach of the Contract of which breach is irremediable, or which breach (if remediable) is not remedied within ten (10) Business Days after the service of written notice from the Lessor requiring it to do so;

10.2.3 the Lessee 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

10.2.4 the Lessee commences negotiations with all or any class of its 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; or

10.2.5 a petition 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 Lessee; or

10.2.6 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 Lessee; or

10.2.7 the holder of a qualifying floating charge over the assets of the Lessee has become entitled to appoint or has appointed an administrative receiver;

10.2.8 a person becomes entitled to appoint a receiver over the assets of the Lessee or a receiver is appointed over the assets of the Lessee; or

10.2.9 a creditor or encumbrancer of the Lessee 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 Lessee's assets and such attachment or process is not discharged within 14 days; or

10.2.10 any event occurs, or proceeding is taken, with respect to the Lessee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.3 to clause 10.2.9 (inclusive); or

10.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

10.2.12 there is a change of control of the Lessee (as defined in section 574 of the Capital Allowances Act 2001).

10.3 The Contract shall automatically terminate if a Total Loss occurs in relation to the Equipment.

10.4 Upon termination of the Contract, however caused:

10.4.1 the Lessor's consent to the Lessee's possession of the Equipment shall terminate and the Lessor may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and

10.4.2 without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor on demand: 10.4.2.1 all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.4;

10.4.2.2 any costs and expenses incurred by the Lessor in recovering the Equipment and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

10.5 Termination of the Contract shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

11. Force Majeure

The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond the Supplier's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. General

12.1 Assignment and subcontracting

12.1.1 The Lessor may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.1.2 The Lessee may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Lessor.

12.2 Notices

12.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, or email.

12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; if sent by pre-paid first class post or recorded delivery, 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 e-mail, one Business Day after transmission.

12.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance

12.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

12.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.4 Waiver

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12.5 Third party rights

A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.6 Variation

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

13. Governing law and jurisdiction

The 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 construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales