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Reg no. GB 3063438
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TERMS AND CONDITIONS FOR HIRE OF EQUIPMENT

1. EXISTENCE AND SCOPE OF CONTRACT

1.1 These terms and conditions together with EMS Industries Ltd verbal or written quotation and the Hirer's acceptance thereof set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms and conditions are implied by statute.

1.2 Unless otherwise expressly agreed collection or acceptance of Equipment or Services by the Hirer shall signify acceptance of these terms and conditions. For the avoidance of doubt EMS Industries Ltd does not intend to enter into contract on any terms and conditions other than those set out herein.

1.3 All quotations by EMS Industries Ltd shall be open for acceptance for 30 days unless expressly stated otherwise or unless withdrawn or revised by EMS Industries Ltd.

1.4 All quotations by EMS Industries Ltd are conditional on availability of equipment.

2. DEFINITIONS

"EMS" is EMS Industries Ltd its successors and assigns;

"Equipment" means any plant, machinery or equipment hired to the hirer by EMS including ancillary equipment and accessories in connection therewith but excluding fuel, lubricants and other consumables;

"Hirer" is the customer of EMS to whom this document is addressed and includes successors or others for whom the said customer is responsible;

"Hire Period" is the period from when Equipment leaves EMS depot until it is received back at EMS depot or such other time notified to EMS under Clause 3;

"Irreparable Damage" means damage to Equipment which is not Repairable Damage;



“Lost Equipment” means Equipment which is not delivered up to EMS at the end of the Hire Period, and which is no longer in possession of the Hirer because it has been lost or stolen;

“Reparable Damage” means damage which has occurred to the Equipment and which, in the opinion of EMS can be repaired by EMS at an aggregate cost for all damaged Equipment hired under each hire contract of the lesser of

- (i) 60% of the replacement cost of the Equipment calculated by reference to the EMS current list prices for the nearest equivalent replacement models and applying the EMS then current published charging rates for its repair engineers, together with material, at cost plus 15% and
- (ii) £6,000;

“Service(s)” means any service other than hire of equipment provided by EMS including but not limited to the provision of any operator or other labour;

“Site” means the place at which the Hirer wishes to use Equipment hired or Services rendered by EMS, and which place has been notified in writing to EMS before commencement of the hire period;

“Specialist Equipment” means items defined to the Hirer on EMS quotations, collection and delivery notes;

“Variation” means any of the following provided it is agreed between the Parties:

- (i) Change of specification of Equipment
- (ii) Additional Equipment
- (iii) Extension of any Hire Period previously agreed between the Parties
- (iv) Supply of labour to operate maintain or otherwise perform services in connection with the Equipment
- (v) Provision of carriage from or to EMS depot unless expressly included in EMS Industries Ltd quotation.

EMS Industries Ltd Registered in England No: 3063438
Registered Office: 7 Tunstall Road Industrial Estate, Knypersley, Stoke on Trent, ST8 7BD.

3 HIRE PERIOD

3.1 The Hire Period shall start at the time when Equipment leaves EMS depot and end when it is received back at EMS depot provided always that if EMS are obliged to arrange carriage, the Hire Period may be ended by the Hirer on the receipt by EMS of a notice from the Hirer setting out details of the end of the Hire Period.

3.2 The customer shall give to EMS not less than 3 days notice of the customer's intent to terminate the hire of the equipment, such notice to be effective and to run from the date when it is actually received by EMS ("the notice period"). The Hirer will terminate all hires verbally and an off-hire number must be obtained and retained. The equipment shall remain at the risk of the hirer for the notice period, three working days. For Specialist equipment the notice period is five working days, this excludes any installed equipment, which will be agreed locally at the time of termination. It is the hirer's responsibility to ensure that the equipment is available for collection. Following an aborted collection the equipment will remain on hire and be the responsibility of the hirer. Charges for an aborted collection will be levied. In the event that the previously agreed Hire Period is terminated prematurely, charges for the full contract hire period will be levied.

4 VARIATIONS

4.1 All Variations shall be in writing and signed by both parties, or shall be requested in writing by the Hirer and accepted expressly as a Variation in writing by EMS.

4.2 No Variation shall vitiate the Contract.

4.3 EMS may require the basis of charging any Variation to be agreed in writing before any Equipment or any service comprising a Variation is provided to the Hirer.

4.4 In the event that the basis of charging a Variation is not agreed as provided in **Clause 4.3** EMS may at its absolute discretion refuse to accept the Variation or may require the subject of the proposed variation to be supplied under a separate contract.

4.5 If EMS accepts a Variation without first having agreed the basis of charging, then the Hirer shall pay a reasonable amount for the Variation having regard to all relevant circumstances including the prices or basis in the Contract of charging for Equipment or Services.

4.6 EMS reserves the right to increase the hire rates on the anniversary of any hire, at the time of cost increase or the 1st January every year, to cover any increase in operating costs including without limitation European or domestic regulatory changes, labour costs, taxation, insurance, updated equipment etc. such increases will be reflected in the monthly invoices.

4.7 EMS reserves the right to modify and or vary its terms and conditions as and when necessary.

4.8 EMS reserves the right to apply additional charges at the point of equipment collection.

5. HIRE CHARGES AND PAYMENT

5.1 Hire charges shall accrue throughout the Hire Period and may be calculated daily or weekly.

5.2 Charges for Variations supplied under **Clause 4** shall be added to Hire Charges.

5.3 The basis of hire and the provision of Variations shall be as stated on the face hereof.

5.4 EMS may submit its invoice for hire services and/or Variations provided under the contract or for any other amounts due from the Hirer to EMS under the contract at monthly intervals commencing after the start of the Hire Period and throughout and at the end of the Hire Period.

5.5 Payment of the invoice amount shall be made within a period of 25 days starting 5 days after date of invoice.

5.6 The Customer shall raise any dispute relating to the invoice no later than 12 days following the date of the invoice. EMS reserves the right to rely on the Late Payment of Commercial Debts (Interest) Act 1998, and charge, at a daily rate, until payment, interest upon the debt then due at the rate prevailing at the date of default (currently 8% above the prevailing Bank of England base rate) together with the late payment charges set out in the Act, until payment or sooner settlement.

5.7 The Hirer indemnifies EMS against all direct legal and other costs including but not limited to the cost of EMS Industries Ltd employees incurred in the recovery of hire charges or other sums, which become overdue for payment.

6. COUNTERCLAIMS AND SET OFF

6.1 Under no circumstances shall monies owed by EMS to the Hirer under this or any other contract between the parties be set off against monies properly due to EMS under this contract.

7. TRANSPORT AND HANDLING OF EQUIPMENT

7.1 The Hirer shall, unless otherwise expressly agreed, arrange and be responsible for all transport of Equipment from EMS depot at commencement of the Hire Period and for return to EMS store on completion or termination of the Hire Period.

7.2 The Hirer shall be responsible for unloading and loading the Equipment at its Site unless otherwise quoted for by EMS and price agreed in writing.

7.3 When an operator, or Service requiring the provision of labour at the Site is provided by EMS:

7.3.1 Such person shall be under the direction and control of the Hirer and shall for all purposes in connection with this contract be regarded as a servant or agent of the Hirer.

7.3.2 The Hirer shall indemnify EMS against all claims arising out of actions or negligence of such person(s) provided always that this clause shall not be construed to exclude or limit liability for death or personal injury resulting from negligence by EMS its servants or others for whom it is responsible.

8. REPAIR AND MAINTENANCE

8.1 The Hirer shall at all reasonable times allow EMS or its representatives or insurers access to the Site to inspect maintain or repair the Equipment.

8.2 The Hirer shall not test adjust or repair the equipment or attempt to do so without written authority from EMS.

8.3 If at any time during the Hire Period the Equipment, in EMS opinion, is in need of repair or adjustment, EMS may at its discretion either stop further use of the equipment until such repairs have been carried out or replace the equipment with other similar equipment.

8.4 In the event that the Equipment (following permission given under **Clause 12** of these Conditions) is removed from the Site to which it is delivered EMS reserves the right to recharge to the customer all costs of repair or adjustment arising after such removal howsoever caused during the remainder of the Hire Period.

9. DAMAGE TO EQUIPMENT

9.1 Subject to clause 9.2 below the Hirer accepts full responsibility for all damage and loss arising from the Hirer's hire of the Equipment including all Reparable Damage, Irreparable Damage and Lost Equipment and hereby undertakes to indemnify and to keep indemnified EMS from and against all such damage and loss. Any such damage or loss shall be payable to EMS within 7 days of the date of the invoices during which period the Hirer may inspect any repaired or replaced items of Equipment.

9.2 The Hirer shall be liable to pay to EMS two-thirds of the hire charges, from the date of off-hire, or damage, or loss, for the Equipment until the Hirer or its insurer has paid to EMS the full replacement cost or the cost of repairing the equipment to full hireable condition.

9.3 Failure of the Equipment from whatever cause shall not entitle the Hirer to any allowance for loss of hire.

10. ACCIDENT ON SITE

10.1 If the Equipment is involved in any incident resulting in injury or death to persons or damage to property, the Hirer shall immediately notify EMS orally, and shall confirm such notification in writing within 2 days.

11. OWNERSHIP AND SUB-LETTING

11.1 The Equipment remains the property of EMS at all times.

11.2 The Hirer shall not sub-let sell, mortgage charge pledge or part with possession of the Equipment or any part thereof without prior consent in writing from EMS and shall at all times protect the Equipment against seizure, distress or execution.

12. SITING OF EQUIPMENT

12.1 The Hirer shall not remove the Equipment or permit the Equipment to be removed from the site without prior consent in writing from EMS.

12.2 The Hirer shall indemnify EMS against all losses costs, damage, charges and expenses arising as a direct result of failure to observe and perform this condition.

12.3 The Hirer shall not remove, deface or cover any name plate or mark on the Equipment indicating that it is the property of EMS.

13. SUITABILITY OF EQUIPMENT

13.1 The choice of Equipment shall be the sole responsibility of the Hirer irrespective of advice or recommendations given by EMS. No warranty is given or implied by EMS as to suitability of Equipment for any particular purpose whether or not such purpose is made known to EMS.

14. EXCLUSION OF LIABILITY

14.1 EMS shall not be liable for any advice or opinion whether given gratuitously or otherwise by it, its employees, agents, or others for whom it is responsible, to the Hirer. To the extent that the Hirer relies on such advice or opinion it does so at the Hirers own risk.

14.2 Except as expressly provided elsewhere in these Conditions. EMS will be under no liability under the contract for any personal injury, death loss or damage of any kind whatsoever (other than death or personal injury resulting from EMS negligence) whether consequential or otherwise including but not limited to loss of production and loss of profits and EMS hereby excludes all conditions warranties and stipulations express or implied statutory customary or otherwise which but for such exclusion would or might subsist in favour of the Hirer except that such exclusion shall not apply to any implied term as to quality or fitness of the Equipment for a particular purpose where the Hirer deals as Consumer as defined in Section 12 of the Unfair Contract Terms Act 1977.

14.3 In no circumstance will EMS or its employees, agents or others for whom its responsible be liable for any loss or damage of any kind whatsoever (other than death or personal injury resulting from EMS negligence) whether consequential of otherwise caused directly or indirectly by any negligence on the part of EMS or on the part of any of its employees agents or others for whom it is responsible in connection with or arising out of the manufacture supply of hire of the Equipment or the installation repair or maintenance of the Equipment or in connection with any statement given or made, or failure to give advice or warning, by or on behalf of EMS.

14.4 In any case where the Equipment is installed or connected to any property of the Hirer or to a third party, and, notwithstanding that the installation and connection of such equipment was carried out by EMS, EMS shall not be liable for any damage caused to any property of the Hirer or any third party and resulting from such installation or connection and the Hirer shall indemnify EMS in respect of all and any liability of EMS so incurred.

15. TERMINATION

15.1 If the Hirer makes default in punctual payment of any hire charges or other sums due to EMS under the contract or fails to observe and perform any of the terms and conditions of the contract or if the Hirer suffers any distress or execution to be levied against it or makes, or proposes to make any arrangement with its creditors or becomes bankrupt or (being a company) goes into liquidation or has an Administrative Receiver or Administrator appointed of the whole or part of its assets or undertaking, or shall do or cause to be done or permit or suffer any act or thing whereby EMS rights and the Equipment may be prejudiced or put in jeopardy then in any such case EMS may at its discretion terminate the contract and the hire of the Equipment without any notice to the customer and retake possession of the Equipment and for that purpose enter into or upon the Site or any site or premises where the equipment may be and the termination of the contract shall not affect the rights of EMS to recover from the customer any monies due to EMS under the contract or damages for breach thereof.

16. INDEMNITY AND INSURANCE

16.1 The Hirer accepts full liability and responsibility in respect of and shall fully and completely indemnify EMS against all third party claims and losses howsoever arising in respect of damage to or loss or destruction of any property or in respect of the personal injury or death of anybody in any way caused by or relating to the equipment or its use including but not limited to the payment of all damages costs and charges in connection therewith, except insofar as the damage loss destruction injury or death directly results from negligence of EMS its employees or agents.

16.2 The hirer shall throughout the Hire Period including the notice period at the Hirer's expense fully insure with a reputable insurance office in the joint names of the Hirer and EMS:

16.2.1 The Equipment for the full replacement value thereof against loss or damage or destruction howsoever arising.

16.2.2 The Hirer's liability to EMS under **Clause 16.1** hereof.

16.3 The Hirer shall:-

16.3.1 Produce the policy or policies effected under this condition for inspection by EMS on demand, and

16.3.2 Hold the proceeds of any claim under the policy or policies in trust for EMS.

17. STATUTORY COMPLIANCE

17.1 The Hirer warrants and represents to EMS that it will obtain every necessary licence or permit required and/or complies with any legal requirements for or relating to the use or installation of the Equipment.

18. FORCE MAJEURE

18.1 EMS shall not be liable for any failure in the performance of any of its obligations under the contract caused by factors outside its control.

19. NOTICES

19.1 To be served effectively, any notice or communication in writing to EMS shall be sent to its address on the face hereof and shall in the case of a notice or communication to the Hirer be sent to the Hirer at its registered office or the address of the Hirer last known to EMS. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was dispatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after dispatch by post or facsimile transmission.

20. SETTLEMENT OF DISPUTES

20.1 Should any dispute or difference arise between the parties under contract at any time then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.

20.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.

20.3 The notice under **Clause 20.2** shall also be served forthwith by the Applicant on the Adjudicator either upon his identity being agreed or upon him being appointed under **Clause 20.4** below as the case may be.

20.4 The parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction Adjudicators (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

21. ADJUDICATION

21.1 The Adjudication is to be carried out with the object of securing the appointment of and the referral of the dispute to the Adjudicator within seven days and requiring a Decision by him within twenty eight days of such referral.

22. GENERAL

22.1 If any provisions contained in these Conditions shall be deemed to be invalid for any reason the condition shall be read as if the invalid provision had to that extent been deleted there from and the validity of the remaining provisions of these Conditions shall not be affected thereby.

22.2 The contract shall be governed by English law and the customer consents to the exclusive jurisdiction of the English courts in matters regarding the contract except to the extent that EMS invokes the jurisdiction of the Courts of any other country.