



Central Power Services Ltd  
Garstang Road  
Claughton-on-Brock  
Lancashire  
PR3 0PH



0845 437 9750



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## CENTRAL POWER SERVICES LIMITED TERMS AND CONDITIONS OF HIRE

### Interpretation

In these Terms, the following definitions apply:

**Applicable Laws:** all applicable laws, statutes and regulations and codes from time to time in force.

**Business Day:** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 4.00 pm on any Business Day.

**Charges:** the total of charges comprising the Hire Rate and any charges associated with Delivery, as set out in the Quotation (or otherwise varied in accordance with these Terms), together with any other charges to be paid by the Customer to CPS in accordance with these Terms.

**Contract:** the contract between CPS and the Customer for the hire of the Equipment in accordance with these Terms.

**CPS:** Central Power Services Limited, a company registered in England and Wales with company number 01980449 and whose registered office is at CPS's Premises.

**CPS's Premises:** Garstang Road Brock Preston, Lancashire, PR3 0PH.

**Customer:** the person or firm who hires the Equipment from CPS, as initially identified in the Quotation.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Deemed Acceptance:** has the meaning given to it in clause 6.2.

**Delivery:** the transfer of physical possession of the Equipment to the Customer at the Site, in accordance with clause 5.3.

**Delivery Date:** means the date on which the Equipment is to be delivered to the Site, as set out in the Quotation and confirmed in the Order.

**Equipment:** the equipment (or any part of it) set out in the Order, having been referred to initially within the Quotation and detailed within the Specification.

**Force Majeure Event:** means events, circumstances or causes beyond a party's reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic, any law or any action taken by the Government or a public authority including without limitation imposing an export or import restriction, quota or prohibition, and the collapse of buildings, fire, explosion or accident and in the case of CPS, a failure of its suppliers or contractors.

**Fuel Management:** means the fuel management services set out in the Schedule.

**Fuel Management Charges:** means any fuel management charges set out in the Schedule and/or Quotation.



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**Hire Period:** means the period of hire which shall commence from the Delivery and continue until the Equipment is collected by CPS from the Site, as may be varied or extended in accordance with these Terms.

**Hire Rate:** means the rate of hire for the Equipment as set out in the Quotation.

**Loss:** actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements, and **Losses** shall be construed accordingly.

**Order:** the Customer's order for the Equipment, as set out in the Customer's written acceptance of the Quotation.

**Order Confirmation:** means CPS's written acceptance of the Order, raised in accordance with clause 2.4.2.

**Order Period:** has the meaning given to it in clause 2.2.

**Promotional Materials:** means CPS's catalogues, brochures, websites or such other applicable sales, descriptions, colours, particulars of weights and dimensions or promotional literature, materials or publications.

**Quotation:** means CPS's quotation or proposal (whether in writing or given orally) to provide the Equipment on hire to the Customer, which is based on the Specification and which incorporates these Terms.

**Recommendations:** has the meaning given to it in clause 8.1.1(c).

**Relevant Event:** has the meaning given to it in clause 6.1.

**Risk Period:** has the meaning given to it in clause 9.1.

**Routine Service:** means a routine service, maintenance and inspection services provided to ensure the correct function and operation of the Equipment, and **Routine Services** and **Routine Servicing** shall be construed accordingly.

**Site:** the Customer's premises or other location to which the Customer wishes for the Equipment to be Delivered, as identified in the Order.

**Specification:** any specification for the Equipment, including any related plans and drawings, that is agreed in writing by the Customer and CPS.

**Support:** has the meaning given to it in clause 4.2.

**Terms:** the terms and conditions set out in this document as amended from time to time in accordance with clause 19.3.

**Warranty Breach:** has the meaning given to it in clause 6.3.

In these Terms, the following rules of interpretation apply:

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

a reference to a party includes its personal representatives, successors and permitted assigns.

a reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.



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any words following the terms **including**, **include** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

a reference to **writing** or **written** excludes fax but not email.

#### Basis of contract

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

Any Quotation that is issued by CPS shall not constitute an offer. A Quotation shall only be valid for a period of 20 Business Days from its date specified on it (**Order Period**). If the Customer accepts the position set out in the Quotation, it shall be required to raise an Order within the Order Period.

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

CPS may reject the Order at its absolute discretion and for any reason whatsoever and the order shall only be deemed to be accepted at the earlier of when CPS:

despatches the Equipment; or

issues an Order Confirmation,

at which point the Contract shall come into existence.

Once accepted, the Order may not be cancelled by the Customer except with the prior agreement of CPS in writing. Without prejudice to any further terms that may be agreed between the parties, any such agreement is on the basis that the Customer shall indemnify CPS, keep CPS indemnified and hold CPS harmless in full from and against all Losses (which for the purpose of this clause shall include, without limitation, the cost of labour and materials, damages, charges, expenses, loss of profit, loss of business, loss of goodwill, loss of business opportunity, loss of anticipated saving and any other indirect, special or consequential loss) incurred by CPS as a result of the cancellation.

Any samples, drawings, descriptive matter or advertising produced by CPS and any descriptions or illustrations contained in any Promotional Materials are produced for the sole purpose of giving an approximate idea of the Equipment referred to in them. They shall not form part of the Contract nor have any contractual force.

CPS' employees or agents are not authorised to make any representations concerning the Equipment unless confirmed by CPS in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

The Equipment shall at all times remain the property of CPS, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these Terms).

#### Charges and payment

The Charges shall be as set out in the Quotation or otherwise as may be agreed in writing between the parties.

CPS may, by giving notice to the Customer at any time before Delivery, increase the Charges to reflect any increase in the cost of the Equipment that is due to any:

factor beyond CPS's control (including foreign exchange fluctuations, increases in taxes and duties (which shall include import and export duties), and increases in labour, materials and other manufacturing costs);



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request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Specification; or

delay caused by any instructions of the Customer or failure of the Customer to give CPS adequate or accurate information or instructions.

The Charges exclude amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to CPS at the prevailing rate, subject to the receipt of a valid VAT invoice.

Unless otherwise set out in the Quotation or agreed in writing, for security the Customer shall be required to pay for the Equipment in advance on a:

weekly basis where the Hire Period is for a period of one month (or less); or

monthly basis where the Hire Period is for a period in excess of one month,

and Payment shall be made within seven (7) days to the bank account nominated by CPS in writing. In the event that the Customer holds a credit account with CPS, the payment will be obtained via a debit or allocation from the credit account. Time for payment shall be of the essence.

CPS may invoice the Customer for the Equipment on or at any time after the Equipment is made available for collection or Delivery and otherwise in such intervals as it determines throughout the Hire Period.

CPS may also invoice the Customer for any Fuel Management Charges at intervals set out in the Schedule, or as otherwise notified by CPS to the Customer from time to time. Time for payment shall be made in accordance with clause 3.4.

If the Customer fails to make a payment due to CPS under the Contract by the due date, then, without limiting CPS's remedies under clause 14 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 3.7 shall accrue on a daily basis at a rate of 8% a year above the Bank of England's base rate from time to time.

The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding required by law). CPS may at any time, without limiting any other rights or remedies it may have, set-off, counterclaim, deduct or withhold any amount payable by CPS to the Customer.

#### Site Conditions

The Customer warrants that the condition of the Site is suitable for the use of the Equipment and Delivery and/or recollection of it by CPS.

If, in the opinion of the Customer, the ground of the Site (including any private access road or track) is soft or otherwise unsuitable for the Equipment to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Customer shall supply and lay suitable timbers or equivalent support (**Support**) in a suitable position for the Equipment to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of Delivery and collection.

Any Support supplied by CPS is provided solely to assist the Customer under their duties within this clause 4 and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Equipment.

The Customer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Site and the Customer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.



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CPS reserves the right to refuse to deliver the Equipment to the Site where it reasonably considers that the conditions at the Site are unsuitable for the Equipment to be so delivered, operated and/or stored by the Customer. The Customer shall remain responsible for payment of the Equipment at the Hire Rate until such time until the conditions at the Site are suitable, together with applicable delivery charges.

#### Delivery

CPS shall use reasonable endeavours to deliver or make available the Equipment on any projected Delivery Date but for the avoidance of doubt time for Delivery is not of the essence and CPS shall not be liable to the Customer in the event of any delay, including those caused by a Force Majeure Event. If CPS cannot make Delivery or make the Equipment available for collection on the Delivery Date, then it shall notify the Customer and an alternative date shall be rearranged.

Where specified in the Quotation, the Customer shall collect the Equipment from CPS's Premises (or such other location as notified to by CPS to the Customer in writing), within two Business Days of CPS notifying the Customer that the Equipment is ready for collection.

Delivery shall be completed on the successful unloading of the Equipment at the Site which, unless otherwise agreed in writing, shall take place on the kerbside or such other hard standing ground as CPS may elect. Where the Equipment is to be collected by the Customer, Delivery shall be completed when CPS places the Equipment at the Customer's disposal at CPS's Premises.

The Customer acknowledges that any delivery charges shall be calculated on the basis of a maximum delivery time of one hour per Site. Provided that the delay has not been caused by an event within CPS's reasonable control, where the unloading time exceeds one hour, CPS shall be entitled to charge the Customer for any additional time spent at the Site until Delivery has been successfully completed in accordance with clause 5.3.

CPS reserves the right to charge the Customer for:

any additional time spent in connection with unloading the Equipment at any other location;

any deliveries performed outside of Business Hours; and

abortive delivery and / or collection charges where CPS is unable complete Delivery or collection due to the Customer's failure to ensure that the Site and any relevant access routes are safe and suitable for CPS to access. The aborted delivery and / or collection charges will not exceed 100% of the sum of the cost of Delivery, the cost of collection and the first week's Hire Rate.

Risk in the Equipment shall pass to the Customer in accordance with clause 5.3.

If the Customer fails to accept Delivery of, or collect the Equipment on the Delivery Date, then, except where such failure is caused by CPS's failure to comply with its obligations under the Contract:

the Equipment shall be deemed to have been delivered at 9.00 am on the Delivery Date;

CPS shall store the Equipment until Delivery takes place; and

the Customer shall continue to pay the Charges as though Delivery had taken place, as well as all CPS's other related costs and expenses associated with the Equipment's storage (including, at CPS's election, insurance).

#### Warranty and Inspection

CPS warrants that as the case may be, on completion of:

collection, where the Customer is collecting the Equipment in accordance with clause 5.2; or

unloading of the Equipment, where CPS agrees to deliver the Equipment,



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(each, a **Relevant Event**) the Equipment shall:

subject to the Customer's warranty at clause 2.3, conform in all material respects with their description and the Specification;

be free from material defects in design, material and workmanship;

be of satisfactory quality and fit for any purpose held out by CPS.

The Customer shall be required to inspect the Equipment on the Relevant Event taking place. In the event that:

an incorrect quantity of the Equipment has been delivered;

anything other than the Equipment is received; or

there is any other instance which the Customer reasonably considers gives rise to a failure to comply with the warranty set out in clause 6.1,

the Customer shall be required to notify CPS within 1 Business Day of the Relevant Event taking place. Where no such notification is made by the Customer to CPS in accordance with this clause, the Equipment shall be deemed to be accepted in all material respects as conforming with the Contract by the Customer (**Deemed Acceptance**).

If the Customer gives notice in writing to CPS at any time prior to Deemed Acceptance that it alleges a breach of the warranty set out in clause 6.1 (**Warranty Breach**), then the Customer agrees to:

provide CPS and any third party instructed on CPS's behalf with a reasonable opportunity of examining the Equipment in question, together with access to the Site (or other Customer premises), data, documentation, information, telecommunications and IT systems and such other materials as may reasonably be requested by CPS; and

if requested to do so by CPS, allow CPS or any third party instructed on CPS's behalf to collect the Equipment from the Site for further inspection,

in order for CPS to investigate the alleged Warranty Breach.

Subject always to clause 6.6.3, CPS may at its sole discretion whilst it investigates the alleged Warranty Breach Deliver suitable replacement Equipment (which the Customer accepts may not necessarily be the same age or type) to the Customer (**Replacement Equipment**), and the warranty contained in clause 6.1 shall be repeated in respect of such Replacement Equipment.

Where, following its investigation, CPS agrees that there has been a Warranty Breach, CPS shall, at its sole discretion:

repair or replace the defective Equipment;

where it has supplied Replacement Equipment, agree for that Replacement Equipment to remain at the Site in place of the Equipment; and/or

otherwise refund a proportionate amount of the Charges,

Where CPS does not agree that there has been a Warranty Breach, CPS shall:

provide the Customer with written reasons for determining such;

in respect of Equipment that CPS has collected for further inspection under clause 6.3.2, either:

*return such Equipment to the Site on a date to be agreed (not later than 5 Business Days thereafter) between the parties (and clause 5 shall apply to such return); or*



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*where Replacement Equipment has been supplied in accordance with clause 6.4, agree for that Replacement Equipment to remain at the Site in place of the Equipment; and*

be entitled to levy an additional charge on the Customer for any inspection, collection, supply and Delivery of Replacement Equipment and other support provided under this clause 6.

#### Monitoring devices

CPS may from time to time install tracking and monitoring devices on the Equipment (**Devices**), in order to monitor the location, operational hours and performance of the Equipment.

The Customer is strictly prohibited from removing, tampering with, disabling or interfering with the Devices, and shall ensure that no third party does so.

Title to the Devices shall at all times remain with CPS.

The data obtained from the Devices will be used in connection with allowing CPS to ensure that the Equipment remains suitably serviced, in CPS' reasonable opinion.

The Customer shall permit CPS and its authorised agents access to the Site and the Equipment when reasonably requested by CPS and shall provide such reasonable assistance as may be required for the purposes of installing, inspecting activating, deactivating, maintaining or removing the Devices, including facilitating remote access where applicable.

The Customer and CPS acknowledge that the Devices are not intended to process personal data. To the extent that any personal data is processed, it shall be processed in accordance with Data Protection Legislation.

#### Customer's General Obligations

Customer warrants, represents and undertakes that it shall, at all times throughout the Hire Term:

ensure that the Equipment is:

*kept at the specific location at the Site at which CPS has agreed for it to be located;*

*used in accordance with good industry practice and all Applicable Laws;*

*used in accordance with CPS's and/or the manufacturer's recommendations as to its storage, commissioning, installation, use and maintenance (**Recommendations**) or, in the absence of such Recommendations, good industry practice relating to the same;*

not re-hire, sub-let or lend the Equipment to any third party without CPS's prior written consent;

take reasonable care of the Equipment and not use the Equipment following any breakdown or damage;

not remove or deface any labels or other indicia from the Equipment;

not interfere with the Equipment, its working mechanisms or any part of them;

at its own expense, take all adequate measures to safeguard the Equipment against theft, damage or other reasonable risks including, but not limited to, ensuring that the Site is secure, fenced and locked outside of working hours to prevent unauthorised access, and ensuring that the Equipment is locked when not in use;

not use, or permit the use of, the Equipment with any illegal or unlicensed purposes. Should CPS reasonably suspect that the Customer is in breach of this clause it reserves the right to inform the police and any other relevant statutory or regulatory authorities and present details of the Customer to them;



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The Customer shall at all times take all reasonable steps to keep itself acquainted with the state and condition of the Equipment. If such Equipment is continued at work or in use in an unsafe and unsatisfactory state or environment, without prejudice to CPS's other rights and remedies, the Customer shall be required to pay on demand to CPS all Losses (which for the purpose of this clause shall include the cost of labour and materials, damages, charges, expenses, loss of profit, loss of business, loss of goodwill, loss of business opportunity, loss of anticipated saving and any other indirect, special or consequential loss) suffered or incurred by CPS as a consequence.

Save where specified in clause 10.1 – 10.3, or where it is agreed between the parties that the foregoing shall be carried out by CPS, the Customer shall be responsible for the conduct and cost of any testing, inspections, examinations and/or other checks to be carried out in respect of the Equipment as required by Applicable Law and/or any Recommendations.

The Customer shall at all reasonable times allow CPS, its agents and insurers to have access to the Equipment to inspect, test, adjust, repair or replace the same.

Where the Equipment requires fuel, oil, grease and or electricity, the Customer shall ensure that the proper type and/or voltage is used at all times and that, where appropriate, the Equipment is properly installed by a qualified and competent person. It is the Customer's responsibility to check the calibration of the Equipment on each occasion before use. Final determination of the suitability of the Equipment for the Customer's specific use is the Customer's responsibility, and the Customer therefore assumed all risk and liability in this regard.

#### customer's Insurance Obligations

The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Customer until such time as the Equipment is collected by or redelivered to CPS (**Risk Period**).

During the Risk Period the Customer shall, at its own expense, obtain and maintain the following insurances:

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 CPS may from time to time nominate in writing;

insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as CPS 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

insurance against such other or further risks relating to the Equipment as may be required by Applicable Laws, together with such other insurance as CPS may from time to time consider reasonably necessary and advise to the Customer in writing.

All insurance policies procured by the Customer shall be endorsed to provide CPS with at least 10 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on CPS's request name CPS on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

If the Customer fails to effect or maintain any of the insurances required under the Contact, CPS 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 Customer.

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



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Where any event or accident occurs which is a risk covered by the Customer's insurance, the Customer shall:

- immediately notify CPS in writing;
- in the event that the Equipment is stolen, immediately notify the police of such theft, and provide CPS with the police crime number within 48 hours of receipt;
- not take any action or make any omission which may compromise any claim without the consent of CPS;
- indemnify CPS, keep CPS indemnified and hold CPS harmless in respect of any Loss to the Equipment not recoverable by CPS under the applicable policy of insurance;
- allow CPS to take over the conduct of negotiations (except in relation to claims of the Customer for personal injuries, or Loss to the property of the Customer); and
- at the expense of the Customer, take such proceedings (in the sole name of the Customer or jointly with CPS) as CPS shall direct, holding all sums recovered, together with any monies received by the Customer under its policy of insurance, on trust for CPS and paying or applying the same as CPS directs and as provided in these Terms.

If the Equipment is declared a total loss the Hire Period will extend and only terminate once CPS has received full replacement Equipment or has been indemnified by the Customer for all costs incurred due to the Equipment being unable to be hired out by CPS. CPS will offset any proceeds received from the sale or scraping of the Equipment after the cost of disposal or sale has been deducted from any proceeds received. The balance of any monies received from this process will be offset against the continuation of the Charges on behalf of the Customer:

Equipment substitutions may be considered by CPS as replacement for discontinued products always at CPS's sole discretion, which replacement shall be deemed to be included in these conditions for all purposes, and the Customer shall continue to be liable to pay Charges as if such loss had not taken place; or

in or towards payment to CPS of the sum necessary to compensate CPS for the loss or profit suffered as a result of the loss of the Equipment.

CPS has the right to repair or have repaired the Equipment which suffers damage (and not a total loss), but if CPS does not choose to do so, the Customer is liable at its own expense (but subject to any insurance proceeds) to reinstate or repair it and shall continue to pay Charges in respect of the Equipment during such reinstatement or repair.

The Customer is liable to pay to CPS any amount deducted by the insurers by way of excess or in respect of damage caused to the Equipment prior to the date of total loss and shall indemnify CPS, keep CPS indemnified and hold CPS harmless in full in respect of that Loss accordingly.

#### servicing, BREAKDOWN, REPAIRS AND ADJUSTMENT

Where the Equipment is subject to Routine Servicing, the Customer shall arrange a Routine Service visit with CPS no less than two Business Days in advance of each Routine Service period (as set out in the Quotation or otherwise at intervals notified by CPS to the Customer) (**Routine Service Period**).

Where the Customer fails to:

make available the Equipment on the Routine Service date nominated in accordance with clause 10.1;  
or

arrange a Routine Service within the relevant Routine Service Period,



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CPS shall be entitled to invoice the Customer for any late Routine Service fees and any additional costs incurred by CPS as a result of the delayed Routine Service.

Hire Rates shall include the Equipment's Routine Service performed by CPS within Business Hours only. Where the Equipment Service is performed outside of Business Hours CPS shall charge the Customer an additional Routine Service fee.

Any breakdown or the unsatisfactory working of or damage to any part of the Equipment must be notified by the Customer immediately to CPS and confirmed in writing in any event within twenty-four (24) hours. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by CPS or (if earlier) the date on which CPS inspects the Equipment.

Charges will not be charged to the Customer for any stoppage due to breakdown of the Equipment caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs. In the event that the Equipment becomes temporarily unusable or unavailable in accordance with this clause, CPS shall use reasonable endeavours to make available Replacement Equipment for collection or Delivery. If the Customer requires such Replacement Equipment to be Delivered to it by CPS, CPS may raise a charge.

The Customer shall not repair, modify, interfere with or alter the Equipment without the prior written permission of CPS. In particular, cables must not be cut, plugs and sockets must not be rewired and identification marks, labels or plates affixed to the Equipment must not be interfered with or otherwise covered up by the Customer. Any Equipment found to have been repaired, modified, interfered with or altered in breach of this clause will be charged at replacement cost to the Customer.

The parts of the Equipment which are not broken shall remain to be charged for at the Hire Rate. The Customer is responsible for the cost of spares and/or repairs due to theft, loss or vandalism of the Equipment.

The Customer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Equipment where:

the Customer makes any further use of such Equipment after giving notice in accordance with clause 10.1;

the defect arises because the Customer failed to follow the Recommendation or (if there are none) good industry practice regarding the same;

the Customer (or a third party acting on its behalf or under its instruction) alters or repairs such Equipment without the written consent of CPS;

the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions, or

otherwise due to the Customer's negligence, misdirection or misuse of the Equipment and whether by the Customer or its agents or servants,

and in such circumstances the Customer shall, without limiting its other payment obligations elsewhere under the Contract and CPS's other rights and remedies, remain responsible for the full payment of applicable Charges during any downtime of the Equipment under this clause 10.8.

No claims will be admitted (other than those allowed for under this clause 10), for stoppages through causes outside CPS's control, including but not limited Force Majeure Events, bad weather and/or ground conditions nor shall CPS be responsible for the cost or expense of recovering any Equipment from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Customer shall be responsible for the cost and expense of recovering any Equipment from soft or unsuitable ground or a hazardous environment.



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Each item of Equipment is hired as a separate unit and the breakdown or stoppage of one or more units (whether the property of CPS or otherwise) through any cause whatsoever, shall not entitle the Customer to compensation or allowance for the loss of working time by any other unit or units of Equipment working in conjunction therewith, provided that where two or more items of Equipment are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

If during the Hire Period CPS decides that urgent repairs to the Equipment are necessary, then it may arrange for such repairs to be carried out on Site or at any location of its nomination.

End of Hire

At the end of the Hire Period the Customer shall make the Equipment available for collection by CPS at the Site in the same location at which it was Delivered (or such other location as the parties may agree) and the Customer's obligations under clause 4 are repeated.

Before the Equipment is collected by CPS, the Customer shall ensure that the Equipment is:

cleaned and where necessary, decontaminated;

in good working condition (fair wear and tear excepted); and

together with all licences, registration and other documentation relating to the Equipment,

and the Customer shall be liable on demand for any Losses suffered or incurred by CPS as a consequence of the Customer's breach of this clause 11.2.

CPS shall be responsible for loading the Equipment and its successful loading shall determine the end of the Risk Period.

Where, at the end of the Hire Period, the Customer wishes to retain the Equipment on hire, it shall issue a hire extension request to CPS in writing, no less than 48 hours prior to the expiry of the Hire Period setting out its required extension time (**Extension Request**).

CPS may accept or reject the Customer's Extension Request at its sole discretion. Where CPS accepts the proposed Extension Request, CPS shall notify the Customer in writing, setting out the period of extension to the Hire Period, including details of the additional charges and any proposed payment plans (as applicable).

Where the Customer fails to comply with its obligations set out in clause 11.1, CPS shall be entitled to invoice the Customer for any additional charges incurred by CPS, including any additional hire charge(s) calculated on weekly basis equivalent to the pro-rata Hire Rate.

Customer's Indemnity FOR LOSS OR DAMAGE

The Customer shall indemnify CPS, keep CPS indemnified and hold CPS harmless in full from and against any and all Losses suffered or incurred by CPS:

arising out of or in connection with the acts or omissions (including any breach of or delay in complying with the obligations imposed by this Contract) by the Customer and any third party acting for it or on its behalf, whether during the Hire Period or where the Equipment is otherwise made available for collection in breach of these Terms;

in respect of injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Equipment during the continuance of the Hire Period, and in connection therewith,



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in each case whether in contract, tort (including negligence), breach of statutory duty or otherwise and whether the same are of a direct, indirect, consequential or special nature and including any loss of profit, loss of goodwill or reputation, loss of business, loss of business opportunity, loss of anticipated saving and loss or corruption of data or information.

For the avoidance of doubt, Losses under clause 12.1 above shall include but not be limited to:

the cost of any repair, cleaning and/or decontamination required to return the Equipment to a condition fit for re-hire;

the full 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;

CPS's costs which may be incurred in tracking or recovering any lost or stolen Equipment; and

payment of the Hire Rate up to and including the date the Customer notifies CPS that the Equipment has been lost, stolen and/or damaged beyond economic repair and from that date until CPS has replaced such Equipment (or retrieved any lost or stolen Equipment), the Customer shall pay, as a genuine pre-estimate of lost profit, a sum as liquidated damages being equal the Hire Rate that would have applied for such Equipment for that period.

In order to mitigate its Losses under the indemnity contained in this clause 12, CPS shall use reasonable endeavours to purchase replacements for such Equipment as quickly as possible using the monies paid by the Customer.

#### Limitation of liability

Nothing in these Terms or the Contract shall limit or exclude CPS's liability for:

death or personal injury caused by negligence;

fraud or fraudulent misrepresentation;

breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973); or

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

The parties each agree that the limitations and exclusions of liability contained in this clause 13 reflect the assurances provided by CPS as to the quality of the Equipment on the occurrence of a Relevant Event, as well as breakdown support that CPS will provide in connection with the Equipment in accordance with clause 10. In light of such assurances and breakdown support and subject always to clause 13.1, all implied terms and conditions as to the quality or performance of the Equipment and any other goods or services provided under the Contract are, to the fullest extent permitted by law, excluded from the Contract.

Subject to clause 13.1:

CPS shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

(a) *loss of profits;*

(b) *loss of sales or business;*

(c) *loss of agreements or contracts;*

(d) *loss of anticipated savings;*

(e) *loss of use or corruption of software, data or information;*

(f) *loss of or damage to goodwill; and*



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*(g) indirect or consequential Loss,*

*that arises under or in connection with the Contract; and*

CPS's total liability to the Customer 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 Charges paid or payable by the Customer to CPS under the Contract.

For the purpose of this clause, **Environmental Damage** means any pollution, contamination, leak, spill, or discharge of hazardous materials, fuel, hydraulic fluid or lubricants into the environment (including air, soil, water or drains). CPS shall not be liable for any Loss or third party claims arising from Environmental Damage to the extent caused by the use, operation, storage, handling or transportation of the Equipment by the Customer or any third party. The Customer shall indemnify CPS against all Losses, liabilities, claims, costs, and expenses arising from Environmental Damage occurring during the Hire Period, except to the extent caused by the CPS' breach.

This clause 13 shall survive termination of the Contract.

#### Termination

Without limiting its other rights or remedies, CPS may terminate this Contract with immediate effect by giving written notice to the Customer if:

the Customer fails to pay any amount due under the Contract on the due date for payment.

the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;

the Customer repeatedly breaches any of the terms of the contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to perform the Contract;

the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

Without limiting its other rights or remedies, CPS may suspend the performance of its obligations under the Contract or any other contract between the Customer and CPS if the Customer becomes subject to any of the events listed in clause 14.1.4 to clause 14.1.6, or CPS reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

#### Consequences of Termination

On termination of the Contract, howsoever arising:

CPS's consent to the Customer's possession and of the Equipment shall terminate;



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CPS may, by its authorised representatives, without notice and at the Customer'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 the Risk Period shall only come to an end once the Equipment has been successfully collected by CPS; and

unless CPS agrees otherwise in writing, the Customer shall pay to CPS on demand any costs and expenses suffered or incurred by CPS in recovering the Equipment from the Site.

On termination of the Contract pursuant to clause 15.1 or any other repudiation of the Contract by the Customer, without prejudice to any other rights or remedies of CPS, the Customer shall pay to CPS on demand a sum equal to the whole of the Rental Payments that would (but for the termination or repudiation) have been payable if the Contract had continued for the full Hire Term.

On termination of the Contract for any reason the Customer shall immediately pay to CPS all of CPS's outstanding unpaid invoices and interest and, in respect of any element of the Hire Term that has elapsed but in respect of which no invoice has been submitted, CPS shall submit an invoice, which shall be payable by the Customer immediately on receipt.

Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

#### Confidentiality

Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 16.2.

Each party may disclose the other party's confidential information:

to its employees, officers, representatives or advisors who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisors to whom it discloses the other party's confidential information comply with this clause 16; and

as may be required by law, a court of competent jurisdiction or any government or regulatory authority.

No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

#### Force majeure

CPS shall not be in breach of the Contract nor liable for delay in performing, or failing to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

CPS shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

If a Force Majeure Event prevents, hinders or delays CPS's performance of its obligations for a continuous period or more twenty Business Days, the Customer may terminate the Contract immediately by giving written notice to CPS and source the Equipment from a third-party supplier.



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## Notices

Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or email.

Any notice shall be deemed to have been received, if:

delivered by hand, at the time the notice is left at the proper address;

sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## General

### Assignment and other dealings

CPS may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### Entire agreement

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

Nothing in the Contract shall limit or exclude any liability for fraud or fraudulent misrepresentation.

### Variation

Except as set out in the Contract, no variation of this Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the parties (or their authorised representatives and permitted assigns).

### 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 right or remedy.

A failure or delay by a Party to exercise, or the single or partial exercise of, any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

### Severance



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If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the parties shall:

negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision; and

if agreement under clause 19.5.1 cannot be reached, delete the relevant provision or part-provision.

### Rights and Remedies

Except as expressly provided in these Terms and the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law and each shall be cumulative of every other right or remedy now or in the future existing and may be enforced concurrently from time to time.

### Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

### Multi-tiered dispute resolution procedure

If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it, expressly excluding failures by the Customer to pay undisputed Charges (**Dispute**) then, except as expressly provided in this Contract, the parties may at their discretion follow the procedure set out in this clause:

either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute;

if the management level employees are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it;

If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Customer is not registered in the United Kingdom, the parties will attempt to settle it by mediation;

Unless otherwise agreed between the parties within 30 days of service of the Dispute Notice, either party may request a recommendation for the nomination of a mediator from the Centre for Effective Dispute Resolution (**CEDR**);

The parties shall have recourse to mediation in accordance with the International Chamber of Commerce's Mediation Rules, which are deemed to be incorporated by reference into this clause;

To initiate the mediation, a party must give notice in writing (**ADR Notice**) to the other party to the Dispute, referring the Dispute to mediation. A copy of the ADR Notice should be sent to CEDR; and

If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Customer is registered in the United Kingdom, the parties may



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commence court proceedings under clause 19.10 in relation to the whole or part of the Dispute.

### Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

### Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

### Schedule – Fuel Management

- A full base tank of fuel is provided on Delivery. It is the Customer's responsibility to check the Equipment's fuel levels on a daily basis and report to CPS when the bulk fuel tank is 1/4 full to ensure continuous running.
- Where the Equipment is hired on a 'standby' basis, the Customer may return it in full or be charged separately for the fuel used, at the rate set out in the Quotation.
- Where the Equipment is running up to 50 hours per week, or on an unlimited basis, without a bulk tank, the first base tank of fuel will be charged for as set out in the Quotation.
- For Equipment running on an unlimited basis, the bulk fuel storage tank will be supplied by CPS only, and this will be delivered in full and charged for on the Delivery Date.
- Subsequent refills of fuel can be provided by CPS if requested – see option for Fuel Management on the Order Confirmation. Deliveries under 1000L carry a standard £100.00 net surcharge.
- Fuel Management can only be undertaken when a bulk tank is hired from CPS. All fuel supplied within the bulk tank will be charged for, whether used or not on the rate set out in the Quotation.
- When the Equipment is hired out on a 50 hour or unlimited running rate basis with a bulk fuel tank, or solely with its own internal tank, and is returned full, CPS at its discretion reserves the right to credit the bulk/base fuel charge subject to a satisfactory fuel sample and quality report. The charge for this sample is £100.00 net, per sample, which shall be deducted from any applicable fuel credit. Fuel sample reports can take up to 21 days to confirm analysis and hence there may be a delay in issuing a credit note under these circumstances.
- Call outs to fuel related problems when fuel management is not carried out by CPS or contaminated fuel sample report, will result, where applicable, in an additional 'call out' charge, a tank cleaning charge, and a replacement material/repair charge (subject to the damage caused to the Equipment) – subject to CPS's standard rates.
- CPS reserves the right to increase (or decrease) the fuel charges per litre without notification and at its absolute discretion, depending on the current oil crude price fluctuations at the time of Delivery, throughout the Hire Period and on completion of the Hire.
- Where fuel is supplied by CPS to the Customer for use in connection with the hire of the Equipment, the parties agree that:



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- CPS shall not be responsible for the carbon footprint and emissions arising out of or in connection with its use of such fuel by the Customer (howsoever arising) and the Customer acknowledges that this use shall not be accounted for by CPS in its carbon reporting; and
- the Customer shall be responsible for:
  - the carbon footprint and emissions arising out of or in connection with its use of such fuel by the Customer (howsoever arising); and
  - accounting for such use in its carbon reporting.