

# CONDITIONS FOR HIRE OF PRODUCTS TO CONSUMERS AND BUSINESS

## **1 INTERPRETATION**

1.1 In these conditions the following meanings:

"Contract" means a contract which incorporates these conditions and made between the Customer and the supplier for the Hire of Hire Goods and/or the sale of products;

"Customer" means the person, firm, company or other organisation hiring Hire Goods

"Deposit" means any advance payment required by the supplier in relation to the Hire Goods which is to be held as security By the supplier.

"Force Majeure" means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any similar events;

"Hire Goods" means any machine, article, tool, and/or device with any accessories specified in a Contract which are hired to the Customer;

"Hire Period" means the period commencing when the Customer holds the Hire Goods on hire (including Saturdays Sundays and Bank holidays) and the happening of any of the following events: (i) the physical return of the Hire Goods by the customer into the supplier's possession, or (ii) the physical repossession or collection of Hire Goods by the supplier;

"Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses And/or liabilities;

"Products" means the products sold to the Customer by the Supplier

Rental" means the Supplier's charging rate for the hire of the Hire Goods which is current from the time during the Hire Period;

"Supplier" means Fullgate Ltd will include its employees, servants, agents and/or duly authorised representatives;

"Services" means the services and/or work to be performed by the Supplier for the Customer in conjunction with the hire of Hire Goods including any delivery and/or collection service for the Hire Goods.

## **2 BASIS OF CONTRACT**

2.1 Hire Goods are hired subject to them being available for hire to the Customer at the time required by the Customer. The Supplier will not be liable for any loss suffered by the Customer as a result of the Hire Goods being unavailable for Hire where the Hire Goods are unavailable due to circumstances beyond the Suppliers control.

2.2 Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a consumer. Where the Customer is acting as a consumer any provision which is marked with an asterisk (\*) may, subject to determination by the courts, have no force or effect. For further information about your statutory rights contact your local authority Trading Standards Department or Citizens Advice Bureau.

## **3 PAYMENT**

3.1 The amount of any Deposit, Rental and/or charges for any Services shall be as quoted to the Customer or otherwise as shown in the Supplier's current price list from time to time. Where a Deposit is required for the Hire Goods it must be paid in advance of the Customer hiring the Hire Goods. The Supplier may also require an initial payment on account of the Rental in advance of the Customer hiring the Hire Goods.

3.2 The Customer shall pay the Rental, charges for any Services, monies for any Products and/or any other sums payable Under the contract to the Supplier at the time and in the manner agreed. The Supplier's prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable.

3.3 Payment by the Customer on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash or cleared funds in respect of the full amount outstanding.

3.4 If the Customer fails to make any payment in full on the due date the Supplier may charge the Customer interest (both before and after judgement/decree) on the amount unpaid at the rate implied by law under Late Payment of Commercial Debts (interest) Act 1998 (where applicable) or the rate of 4% above the base rate from time to time of the Supplier's bank whichever is higher.

3.5 The Customer shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counter claim and/or any other withholding of monies.

The Supplier may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend the Contract for hire of the Hire Goods and/or the provision of Services if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.

3.6 For the Hired Goods it is a one off payment for fitting and removal of the Hired Goods.

## **4 RISK OWNERSHIP AND INSURANCE**

4.1 Risk in the Hire Goods and any Products will pass immediately to the Customer when they leave the physical possession or control of the supplier.

4.2 In the Hire Goods will not pass back to the Supplier from the Customer until the Hire Goods are back in the physical possession of the Supplier. This shall apply even if the Supplier has agreed to cease charging the rental.

4.3 Ownership of the Hire Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer. Ownership of any Products remains with the Supplier.

4.4 The Supplier may provide reasonably priced insurance in respect of the Hire Goods at an additional cost to the rental. Alternatively the Supplier may require the Customer to insure the Hire Goods on such reasonable terms and for such reasonable risks as the Supplier may specify. The proceeds of any such insurance that relate directly to the Hire Goods shall be held by the customer in trust for the Supplier and be paid by the Supplier on demand. The Customer must not compromise any claim in respect of the Hire Goods and/or any associated insurance without the Supplier's written consent.

## **5 CARE OF HIRE GOODS**

The Customer shall:-

5.1 Not remove any labels from and/or interfere with Hire Goods, their working mechanisms or any other parts of them and shall take reasonable care of the Hired Goods and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied by the Customer;

5.2 Notify the Supplier immediately after any breakdown, loss and/or damage to the Hire Goods;

5.3 Take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;

5.4 Permit the Supplier at all reasonable times and upon reasonable notice to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;

5.5 Not to continue to use Hire Goods where they have been damaged and will notify the Supplier immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person.

5.6 The Hire Goods must be returned by the Customer in good working order and condition (fair wear and tear expected) and in a good clean condition.

5.7 The Hire Goods are properly installed by a qualified and competent person.

5.8 The Hired Goods must be checked at least once a week and all history to be put in the Fullgate assessment book. This is to be Signed by the Health and Safety officer on site and to be faxed back to Fullgate Ltd.

## **6 DELIVERY, COLLECTION AND SERVICES**

6.1 Where the supplier provides Services the person performing the services are servants of the customer and once the customer instructs such person they are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instruction, guidance and/or advice except to the extent that the persons performing the services are negligent.

6.2 The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to utilities. For the Supplier's employees, sub-contractors and/or agents to allow them to carry out the Services. The Customer will ensure that the site where the services are to be performed is, where necessary, cleared and prepared before the services are due to commence.

6.3 If any Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation expect where the Customer is acting as a consumer and the delay is due to a Force Majeure event.

## **7 BREAKDOWN**

7.1 Allowance will be made in relation to the Customer for any non-use of the Hire Goods due to breakdown caused by the development of an inherent fault and/or fair wear and tear on condition that the Customer informs the Supplier as soon as practicable of the breakdown.

7.2 The Customer shall be responsible for all expenses, loss (including loss of rental) and/or damage suffered by the

Supplier arising from any breakdown of the Hire Goods due to the Customer's negligence, misdirection and/or misuse of the Hire Goods.

7.3 The Supplier will at its own cost carry out all routine maintenance and repairs to the Hire Goods during the Hire Period and all repairs which are required due to fair wear and tear an inherent fault in the Hire Goods.

The Customer will be responsible for the cost and repairs necessary to Hire Goods during the Hire Period which arise otherwise than as a result of fair wear and tear, an inherent fault and/or the negligence of the Supplier while carrying out routine maintenance and/or repairs.

7.4 The Customer must not repair or attempt to repair the Hire Goods unless authorised to do so in writing by the supplier.

## **8 LOSS OR DAMAGE TO THE HIRE GOODS**

8.1 If the Hire Goods are returned in damaged or in a defective state except where due to fair wear and tear and/or an inherent fault in the hire goods the customer shall be liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire and to pay rental, in accordance with the provisions of clause 8.3 until such repairs and/ or cleaning have been completed.

8.2 The customer will pay to the supplier the replacement cost of any Hire Goods which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to the Supplier under any policy of insurance taken out in accordance with these conditions. Please see [www.fullgate.co.uk](http://www.fullgate.co.uk), for a price guide.

8.3 The Customer shall pay the Rental for the Hire Goods up to and including the date notifies the Supplier that the Hire Goods have been lost, stolen and/or damaged beyond economic repair. From that date until the Supplier has replaced such Hire Goods the Customer shall pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages being equal to two thirds of the Rental that would have applied for such Hire Goods for that period. The Supplier shall use its reasonable commercial endeavours to purchase replacements for such Hire Goods as quickly as possible using the monies paid under clause 8.2 above.

## **9 TERMINATION BY NOTICE**

9.1 The Supplier shall be entitled to terminate the hire of the Hire Goods by giving not less than 14 days notice to the Customer.

## **10 DEFAULT**

10.1 If the Customer:-

10.1.1 Fails to make any payment to the Supplier when due without just cause;

10.1.2 Breaches the terms of the contract and where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be reminded;

10.1.3 Persistently breaches the terms contract;

10.1.4 Provides incomplete material, materially inaccurate or misleading facts and/or information in connection with the contract

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

10.2.1 Except where the customer is acting as a consumer the supplier may enter, without prior notice, any premises of the customer (or premises of the third parties with their consent) where Hire Goods and/or Products owned by the Supplier may be and repossess any Hire Goods and/or Products

10.2.2 The Supplier may withhold the performance of any Services and cease any Services in progress under this and any other contract with the Customer;

10.2.3 The supplier may immediately cancel, terminate and/or suspend without liability to the Customer the Contract and/or any other contract with the Customer; and/or

10.2.4 All monies owed by the Customer to the Supplier shall immediately become due and payable.

10.3 Any repossessions of the Hire Goods and/or Products shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach which occurred prior to repossession of the Hire Goods.

10.4 Upon termination of the Contract the Customer shall immediately:

10.4.1 Return the Hire Goods to the Supplier or make the Hire Goods available for collection by the Supplier as requested by the Supplier; and

10.4.2 Pay to the Supplier all arrears for rentals, Charges for any service, monies for any Products and/or any Other sums payable under contract.

## **11 LIMITATIONS OF LIBERTY**

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

11.2 If the supplier is found to be liable in respect of any loss or damage to the customers property the extent of the supplier's liability will be limited to the retail cost of replacement of the damaged property.

11.3 Any defective Hire Goods must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any liability for defective Hire Goods.

11.4 The Supplier shall have no liability to the Customer if, without, just cause, any monies due in respect of the Hire Goods and/or the Services have not been paid in full by the due date for payment.

11.5 The Supplier shall have no liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Hire Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.

11.6 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no liability to the Customer.

11.7 The Supplier shall have no liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.

11.8 The Supplier shall have no liability to the Customer for any:-

11.8.1 Consequential losses (including loss of profits and/or damage to goodwill).

11.8.2 Economic and/or other similar losses.

11.8.3 Special damages and indirect losses; and/or

11.8.4 Business interruption, loss of business, contacts and/or opportunity.

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

11.9.1 Liability for breach of contract;

11.9.2 Liability for breach of statutory and/or common law duty;

11.10 Nothing in this Contract shall exclude or limit the liability of the Supplier for death or personal injury due to the Supplier's negligence nor exclude or limit any other type of liability which is not permitted to exclude or limit as a matter of law

## **12 GENRAL**

12.1 Each hire of an item of Hire Goods shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Goods.

12.2 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors As though they were its own acts and/or omissions under this Contract.

12.3 The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any tortious/delictual act and/or omission and/or any breach of statutory duty by the Customer.

12.4 No waiver by the Supplier of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

12.5 The Supplier shall have no liability to the Customer for any delay and/or non performance of Contact to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

12.6 All third party rights are excluded and no third parties shall have any rights to enforce the Contract. This shall not apply to any finance company with whom the Supplier has an outstanding finance agreement relating to the Hire Goods. Such finance company shall, subject to the Supplier's consent, have the right to enforce this Contract as if they were the Supplier.

12.7 There will be a minimal charge of five hundred pound, for the Managing Director to travel to site. (over a hundred miles) to produce either the Inland Revenue Card or the CSCS Card.