

BLACKWALL HIRE LTD STANDARD TERMS AND CONDITIONS OF HIRE

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in these terms and conditions (Conditions).

Contract: the customer's purchase order and the Supplier's acceptance of it or the Customer's acceptance of a quotation for Services by the Supplier under Condition 2(b).

Customer: the person, firm or company who purchases Services from the Supplier.

Services: the services to be provided by the Supplier under this Agreement as set out in Schedule 1.

Supplier: Blackwall Hire Limited incorporated in England and Wales with company number 5075259 whose registered office is at 143 Ormside Street, South Bermondsey, London SE15 1TF.

Supplier's Equipment: the equipment specified in the Supplier's Confirmation of Order.

2. APPLICATION OF CONDITIONS

These conditions shall:

(a) apply to and be incorporated into the Contract; and

(b) prevail over any inconsistent terms or conditions contained or referred to in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

3. SUPPLIER'S OBLIGATIONS

The Supplier shall use reasonable endeavours to provide the Services in accordance in all material respects with the Supplier's Confirmation of Order.

4. CUSTOMER'S OBLIGATIONS

4.1 The customer shall:

(a) co-operate with the Supplier in all matters relating to the Services;

(b) provide for the Supplier, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation and other facilities as requested by the Supplier;

(c) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the services;

(d) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services; and

(e) keep and maintain the Supplier's Equipment and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation.

4.2 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

4.3 The Customer shall be liable to pay the Supplier on demand all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5. CHARGES AND PAYMENT

5.1 Condition 5.2 shall apply if the Supplier provides the Services on a time and materials basis.

Condition 5.3 shall apply if the Supplier provides the Services for a fixed price. The remainder of this condition 5 shall apply in either case.

- 5.2 Where the Services are provided on a time and materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the standard fee rates;
 - (b) all charges quoted to the Customer shall be exclusive of VAT which the Supplier shall add to its invoices at the appropriate rate.
- 5.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Supplier's Confirmation of Order.
- 5.4 The Customer shall pay each invoice submitted to it by the Supplier in full and in cleared funds within 30 days of receipt.
- 5.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds TSB Bank accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgement and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend all Services until payment has been made in full.
- 5.6 Time for payment shall be the essence of this Agreement.
- 5.7 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

6 CANCELLATION

Cancellation of orders within 72 hours of hire is chargeable at 25% of the hire charge set out in Schedule 2 and within 24 hours at 50% of the hire charge as set out in schedule 2. If cancellation is made more than 72 hours before the date of hire, there is no charge.

7. RISK – OWNERSHIP AND INSURANCE

- 7.1 Risk in the Supplier's Equipment will pass to the Customer immediately when the Supplier's Equipment leaves the Supplier's physical possession or control.
- 7.2 Risk in the Supplier's Equipment will not pass back to the Supplier until the Supplier's Equipment is returned to the Supplier's physical possession.
- 7.3 Ownership of the Supplier's Equipment remains with the Supplier at all times. The Customer has no right, title or interest in the Supplier's Equipment except that it is hired to the Customer.
- 7.4 The Customer must not deal with the ownership or any interest in the Supplier's Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending.
- 7.5 The Customer is required to insure the Supplier's Equipment with a reputable insurance company on such reasonable terms and for such reasonable risks as the Supplier may specify. The Customer shall hold the proceeds of any such insurance in trust for the Supplier in a separate bank account and the Customer shall pay such proceeds to the Supplier on demand.

8. CARE OF SUPPLIER'S EQUIPMENT

- 8.1 The Supplier is responsible for the moving, erection and dismantling of all of the Supplier's Equipment included in the Services. The Customer shall not move the Supplier's Equipment during the period of hire without the prior consent in writing of the Supplier and any such movement shall be at the Customer's own risk.
- 8.2 No screws, nails, adhesive or other fixings may be made to the Supplier's Equipment without the prior consent in writing of the Supplier.
- 8.3 The Customer will be liable to pay the cleaning charge of 25% of the hire charge set out in Schedule 2 of the Supplier's Confirmation of Order in respect of any of the Supplier's Equipment that is not returned in the clean and ready to use state in which it was supplied.
- 8.4 The Customer will be liable to pay:
- (a) three times the hire charge set out in Schedule 2 of the Supplier's Confirmation of Order in respect of the damage to any fabric covering included in the Supplier's Equipment that arises during the period of hire;

(b) six times the hire charge set out in Schedule 2 of the Supplier's Confirmation of Order in respect of damage to the structure of any panel included in the Supplier's Equipment that arises during the period of hire; and

(c) one times the hire charge set out in Schedule 2 of the Supplier's Confirmation of Order in respect of damage to any aluminium joining piece included in the Supplier's Equipment.

9 LIMITATION OF LIABILITY – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

9.1 This condition 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of this Agreement

(b) any use made by the Customer of the Services or any part of them;

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

9.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

(a) for death or personal injury resulting from negligence;

(b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier.

9.4 Subject to condition 9.2 and 9.3

(a) the Supplier shall not be liable for:

(i) loss of profits; or

(ii) loss of business; or

(iii) depletion of goodwill and/or similar losses; or

(iv) loss of anticipated savings; or

(v) loss of goods; or

(vi) loss of contract; or

(vii) loss of use; or

(viii) loss or corruption of data or information; or

(ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to the price paid for the Services.

10. DATA PROTECTION

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency and personal data will be processed by and on behalf of the Supplier in connection with the Services.

11. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock outs, or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

12 VARIATION

No variation of this Agreement or these Conditions [or of any of the documents referred to in them] shall be valid unless it is in writing and signed by or on behalf of each of the parties.

13 WAIVER

13.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom it is addressed and the circumstances for which it was given.

13.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

14. SEVERANCE

14.1 If any provision or part of a provision is found by any Court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

14.3 The parties agree, in the circumstances referred to in condition 14.1 (and if condition 14.2 does not apply), to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

15 STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that, in entering into this Agreement, it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of this Agreement other than as expressly set out in this Agreement.

16 ASSIGNMENT

16.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

16.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any manner with all or any part of its rights and obligations under this Agreement.

17 NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall operate to create a partnership between the parties or to authorise either party to act as agent for the other and neither party shall have authority to act in the name of or otherwise bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18 RIGHTS OF THIRD PARTIES

This Agreement is made for the benefit of parties to it and (where applicable) their successors and permitted assignees and is not intended to benefit or be enforceable by anyone else.

19. NOTICES

Notice given under this Agreement shall be in writing, sent for the attention of the person and to the address or fax number given in this Agreement (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid first class post or recorded delivery. A notice is deemed to have been received if delivered personally, at the time of delivery; in the case of fax, at the time of transmission; in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 19 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

20. GOVERNING LAW AND JURISDICTION

20.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

20.2 The parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.