

Supplemental Terms and Conditions for the Sale of Goods and Loan or Rental of Equipment

TMB shall sell Goods or loan or rent Equipment to the Customer on the terms and conditions set out in TMB's General Terms and Conditions and the terms and conditions set out below. All definitions set out in the General Terms and Conditions shall, unless otherwise specified below, have the same meaning when used in this Supplement.

1. SUPPLEMENTAL DEFINITIONS

- 1.1 'Contract Price' means the price of the Goods agreed between the parties.
- 1.2 'Faulty' means that the Goods do not conform substantially to specification.
- 1.3 'List Price' means the manufacturers retail price of the Goods prevailing at the Commencement Date.

2. TERM

- 2.1 This Agreement will be deemed to come into effect on the Customer's signature of the Order and shall run until the occurrence of the latest of the following events:
 - 2.1.1 The expiry of the warranty period set out herein;
 - 2.1.2 The termination of any agreement for the supply of Services ('Supplemental Service Agreement') in conjunction with which Rental Equipment is to be provided as set out in the Order.

3. RENTAL AND LOAN OF EQUIPMENT

- 3.1 TMB may, at its sole discretion agree to rent or loan Equipment to the Customer. The provisions of this clause 3 shall only apply to Equipment that is rented from or loaned by TMB.
- 3.2 If TMB loans Equipment to the Customer, all of the provisions of this clause 3, save sub-clause 3.3 shall apply.
- 3.3 If the Equipment is rented by the Customer, the Customer agrees:
 - 3.3.1 The rental charge, Minimum Term and billing period are as set out on the relevant Order (and if not separately specified the Minimum Term for equipment rental shall be equal to the Minimum Term for the provision of any Services to be supplied by TMB);
 - 3.3.2 If the Customer terminates the Supplemental Service Agreement for convenience prior to the end of its Minimum Term or any subsequent Additional Term the Customer shall be liable for the rental charges payable for the remainder of the Minimum Term or Additional Term thereof as appropriate, plus any charges for the removal of the Rented Equipment;
 - 3.3.3 If TMB terminates the Supplemental Service Agreement due to the Customer's un-remedied breach thereof prior to the end of the Minimum Term or any subsequent Additional Term, the Customer shall be liable for the rental charges payable for the remainder of the Minimum Term or Additional Term thereof as appropriate, plus any charges for the removal of the Rented Equipment.
- 3.4 Rented Equipment and Loaned Equipment shall at all times remain the property of TMB.
- 3.5 Without prejudice to any of its other rights, TMB may recover or resell the Rented Equipment or Loaned Equipment supplied and its servants or agents may enter upon the Customer's premises for that purpose if any of the provisions of Clause 11.1 of the General Terms and Conditions are exercised by TMB and TMB has reasonable grounds to believe that its interest in the Rented Equipment or Loaned Equipment is or is likely to be in jeopardy.
- 3.6 In the event of a malfunction of the Loaned Equipment or Rented Equipment TMB shall at its sole discretion either repair the defective equipment or replace the defective equipment with equipment of equal or greater functional specification.
- 3.7 TMB shall at its sole discretion install the Rented Equipment or Loaned Equipment at the Customer's site.
- 3.8 The Customer undertakes to:
 - 3.8.1 Only use the Rented Equipment or Loaned Equipment in conjunction with the Services for which it has been provided;

- 3.8.2 Store the Rented Equipment or Loaned Equipment in a manner that makes it readily identifiable as the Rented Equipment or Loaned Equipment;
 - 3.8.3 Keep the Rented Equipment or Loaned Equipment properly insured for not less than its List Price;
 - 3.8.4 Obtain and pay for all necessary licences, consents and approvals required for the installation and operation of the Rented Equipment or Loaned Equipment;
 - 3.8.5 Notify TMB promptly of any faults in, loss of or damage to the Rented Equipment or Loaned Equipment;
 - 3.8.6 Pay TMB by way of liquidated damages the List Price for the Rented Equipment or Loaned Equipment and any additional losses incurred by TMB in the event of loss of or damage to the Rented Equipment or Loaned Equipment, howsoever caused, save by TMB, its employees or subcontractors.
- 3.9 The Customer undertakes not to:
- 3.9.1 Pledge the Rented Equipment, Loaned Equipment or documents to title thereon, or allow any credit to arise thereon;
 - 3.9.2 Dispose of the Rented Equipment, Loaned Equipment or documents of title thereon or any interest therein; or
 - 3.9.3 Hold itself out as TMB's agent in respect of the Rented Equipment or Loaned Equipment; or
 - 3.9.4 Repair, modify or otherwise maintain, or allow any other party to do same to the Rented Equipment or Loaned Equipment.
- 3.10 On termination of this Agreement, howsoever occasioned the Customer shall:
- 3.10.1 Return the Rented Equipment or Loaned Equipment to TMB in good condition, subject to reasonable wear and tear;
 - 3.10.2 Remain liable for the Rented Equipment or Loaned Equipment until such time as it has been delivered to TMB;
- 3.11 If the Rented Equipment or Loaned Equipment is not returned to TMB or is returned damaged, TMB shall be entitled to charge the Customer, by way of liquidated damages, the List Price for the Rented Equipment or Loaned Equipment and any additional losses incurred by TMB.
- 3.12 The Customer shall return Rented Equipment or Loaned Equipment to TMB within 30 days of any request by TMB to return such.

4. PRICES AND CHARGES

- 4.1 The Contract Price for Goods and / or Rental Equipment is set out on the Order and is subject to the provisions of clause 4.2 hereof.
- 4.2 TMB shall at any time be entitled to increase the prices for Goods or Rented Equipment set out in the Order:
 - 4.2.1 Should the Customer alter its specification or instructions after the date of Order or TMB otherwise has to alter, modify or otherwise carry out work on any Goods;
 - 4.2.2 Should there be any increase in the cost to TMB of acquiring any Goods or Rented Equipment by reason of any taxes, duties or any other cause whatsoever beyond the reasonable control of TMB.
- 4.3 All prices quoted by TMB are exclusive of Value Added Tax and other taxes, duties and other impositions and the Customer shall pay all taxes, duties and other government charges in respect of the Goods or Rented Equipment at the rate ruling at the tax point, together with transport costs for delivery of the Goods or Rented Equipment to the Customer if such is set out on the Order.

5. PAYMENT

- 5.1 Notwithstanding the provisions of sub-clause 9.3 of the General Terms and Conditions, TMB shall be entitled at its sole discretion, to request payment for Goods prior to the despatch of such Goods to the Customer.
- 5.2 If TMB allows provisional credit or extends credit in respect of any part of the Goods, it shall be without prejudice to its right to refuse to give up possession of any other part of the Goods, save against payment.
- 5.3 Where the Goods are to be supplied or payment theretofore is to be made by instalments the failure of the Customer to pay any of the instalments in due time shall entitle TMB to treat such failure as repudiation of the whole Contract with the Customer and to recover damages incurred as a result of such breach of Contract.

- 5.4 If payment is overdue in whole or in part then the whole of any amounts outstanding to TMB shall immediately become payable whether or not such monies should have been payable at that time but for the provisions of this sub-clause.
- 5.5 TMB shall raise invoices for Rented Equipment charges according to the charges and billing period set out on the Order.
- 5.6 If the Customer is unable to accept delivery of the Goods on the agreed delivery date, TMB shall be entitled to invoice the Customer as if such delivery had taken place.

6. WARRANTY

- 6.1 With respect to Goods that are manufactured by a third party and sold by TMB:
 - 6.1.1 TMB's only warranty to the Customer is that the Goods shall conform substantially to the description provided by TMB and are free of any rightful claims of their manufacturer.
 - 6.1.2 To the extent that any warranties extended to TMB by their manufacturer are transferable, TMB shall transfer such warranties to the Customer.
 - 6.1.3 TMB cannot pass onto the Customer any greater warranty in respect of the Goods than that which has been conferred on TMB under the terms of TMB's agreement with its own supplier(s).
- 6.2 Subject to clause 14, the warranty contained in sub clause 6.1 is given in lieu of and shall be deemed to exclude all other warranties and conditions, whether express or implied and whether arising by common statute or otherwise.
- 6.3 If the supplied Goods are Faulty or become Faulty and the manufacturer agrees to accept a claim under its warranty provisions, the Customer shall return the Goods to the location specified by TMB for the purpose of repair under such warranty. TMB shall pay for packaging and carriage and provided that the method of carriage is agreed by TMB such carriage will be at TMB's risk.

7. TECHNICAL INFORMATION

- 7.1 TMB shall be under no liability whatsoever resulting from or arising out of or in connection with or in relation to any statement made by any of its employees, servants or agents or contained in any document before the Contract between TMB and the Customer unless TMB gives notice in writing to the Customer that it intends to rely on any such statement or document.
- 7.2 Without prejudice to the generality of sub-clause 7.1:
 - 7.2.1 Any description contained in any catalogue, sample price lists or other advertising material supplied by TMB is intended merely to present a general picture of the Goods sold by TMB and shall not form a representation to the Customer or become part of any contract for sale of Goods made between TMB and the Customer;
 - 7.2.2 TMB makes no warranty express or implied concerning any advice or recommendation made to it by the Customer.

8. DELIVERY

- 8.1 If Goods are to be delivered by TMB to the Customer, such Goods shall be delivered to the location set out in the Order. Unless it is otherwise agreed in writing, such Goods shall be delivered by any means chosen by TMB and TMB shall not be under any obligation to provide personnel, plant or power to assist the unloading of the Goods.
- 8.2 If the Customer is unable to take delivery of the Goods, TMB may at its sole discretion store the Goods at its risk, but may be entitled to charge the Customer its reasonable costs for doing so.
- 8.3 TMB shall make reasonable endeavours to avoid delay but no responsibility is undertaken for meeting any specific delivery dates. Accordingly, no liability will be accepted for any direct or indirect loss which may be caused by delayed delivery whether brought about by a cause beyond the control of TMB or not.
- 8.4 TMB shall be entitled to deliver the Goods, Rented Equipment or Loaned Equipment in one or more consignments unless otherwise agreed.
- 8.5 The Customer shall inspect the Goods immediately on delivery thereof and shall within two Working Days from such delivery give TMB notice of any matter or thing by reason whereof the Customer may allege that the Goods are not in accordance with the Contract or are defective in material or workmanship. If the Customer fails to give

such notice the Goods shall be conclusively presumed to be in all respects in accordance with the Contract and free from any defect which would be apparent on any reasonable examination and the Customer shall be deemed to have accepted the Goods accordingly. If the Customer establishes to TMB's reasonable satisfaction that the Goods are not in accordance with the Contract or are so defective, TMB may elect to repair the Goods or to replace the Goods or to refund the purchase price against the return of the Goods.

- 8.6 If Goods are lost or damaged in transit the Customer shall notify both TMB and the carrier of the loss or damage as soon as reasonably possible, and no later than two Working Days of the delivery.
- 8.7 TMB shall not be responsible for the installation of Goods, Rented Equipment or Loaned Equipment at the Customer's site under the terms of this Supplement.

9. RETURNS

- 9.1 Goods supplied to the Customer under the terms of this Agreement which the Customer wishes to return for reasons other than those set out in sub-clause 8.6 cannot be returned without TMB's prior written consent.
- 9.2 The Customer shall be responsible for delivering the Goods to TMB's premises and the Customer shall be liable for all packaging and carriage costs.
- 9.3 All Goods returned to TMB shall be returned in the same condition and packaging in which such was originally delivered to the Customer.
- 9.4 TMB shall be entitled to charge the Customer a handling / re-stocking charge.

10. PASSING OF RISK

- 10.1 The Goods shall be at the Customer's risk from the time of delivery of the Goods to the Customer or a third party identified by the Customer and if the Customer returns Goods to TMB, until the time of delivery back to TMB.
- 10.2 Where Goods are to be collected by the Customer, or by the Customer's carrier the Goods shall be at the Customer's risk from the time of collection of the Goods.
- 10.3 TMB shall not be liable for any loss of any kind to the Customer arising from any damage to the Goods occurring after the risk has passed to the Customer howsoever caused, nor shall any liability of the Customer to TMB be diminished or extinguished by such loss.

11. RETENTION OF TITLE

- 11.1 The Goods agreed to be sold shall remain the property of TMB until all sums due to TMB have been paid in full.
- 11.2 Without prejudice to any of its other rights, TMB may recover or resell the Goods supplied and its servants or agents may enter upon the Customer's premises for that purpose on the occurrence of any of the events listed in sub-clauses 11.1.1, 11.1.4, 11.1.7 and 11.1.9 of the General Terms and Conditions; or
- 11.2.1 TMB has reasonable grounds to believe that the Customer is insolvent or that TMB's right to receive payment or its interest in the Goods is or is likely to be in jeopardy.
- 11.3 Until property in the Goods has passed to the Customer hereunder the Customer shall not:
- 11.3.1 Pledge the Goods or documents to title thereon, or allow any credit to arise thereon; or
- 11.3.2 Dispose of the Goods or documents of title thereon or any interest therein ; or
- 11.3.3 Hold itself out as TMB's agent in respect of the Goods.
- 11.4 Until such times as the Customer becomes the owner of the Goods supplied to it, the Customer will keep the Goods properly insured for not less than the purchase price thereof.

12. USE OF GOODS

- 12.1 The Customer shall bring to the attention of all persons using the Goods all of TMB's or the manufacturer's instructions and recommendations for use of the Goods. Further the Customer shall take such steps as are necessary to ensure that there will be available in connection with the use of the same adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health.
- 12.2 The Customer shall not remove or deface any label affixed to the Goods which refers any user thereof to TMB's or the manufacturer's instructions and or recommendations for use.

- 12.3 If any item comprised in the Goods is resold by the Customer, the Customer shall bring to the attention of its purchaser all of TMB's or the manufacturer's instructions and recommendations for use of the Goods. Further on such resale the Customer shall exact an enforceable undertaking from its purchaser not to remove any label affixed to the Goods which refers any user thereof to TMB's or the manufacturer's instructions and recommendations for use of the Goods and that such purchaser shall take such steps as are necessary to ensure that there will be available in connection with the use of the Goods adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health.
- 12.4 The Customer shall indemnify and keep indemnified TMB on a continuing basis against all actions, suits, claims, demands, losses, charges, costs and expenses which TMB may suffer or incur in connection with any claim or third party alleging the facts which if established would indicate a breach of the undertakings, representations and warranties on the part of the Customer contained in this clause 12 or which if established would indicate a breach by any purchaser from the Customer of any undertaking, which the Customer is required in this clause 12 to exact from such purchaser.

13. CANCELLATION

- 13.1 No cancellation, alteration, amendment or postponement of delivery of all or part of its order by the Customer shall be effective unless communicated in writing to TMB and agreed in writing by TMB.
- 13.2 Upon any such cancellation TMB shall be entitled to be paid the price of the Goods purchased by TMB or supplied to the date of the cancellation and the Customer shall take over and pay for at the current price such materials as have been allocated by TMB to the Contract.

14. IT SOFTWARE

- 14.1 All Software shall be supplied to the Customer for use under the terms of the licence granted by the owner of the Software to the Customer and all intellectual property and title and the rights in the Software shall remain vested in any third party owning such property, title and rights.
- 14.2 Any warranty or guarantee given by TMB in respect of the Software shall be strictly limited to the medium of storage and TMB shall not be liable in respect of any loss or damage occasioned to the Software itself or consequential upon the use of the Software for any purpose.

15. EXCLUSION OF LIABILITY

- 15.1 Save as expressly set out in this Supplement the Goods are not supplied with or subject to any condition, warranty or other term whether express or implied unless specifically stated by TMB in writing and except for the terms implied by section 12 of the Sale of Goods Act 1979.
- 15.2 In no circumstances except under clause 6 above shall be TMB's liability whether in contract or in respect of any negligence or otherwise to the Customer arising under or out of or in connection with any contract for the supply of Goods exceed the cost to the Customer in replacing or repairing such Goods. Except in any case where a claim is made under Section 12 of the Sale of Goods Act 1979 or where clause 13.2 applies, TMB shall not be under any liability for any cost or expenses incurred by the Customer in repairing or replacing such Goods unless TMB is first afforded a reasonable opportunity of repairing or replacing them provided that the Customer shall be entitled to effect such repairs or replacements before affording such an opportunity as may be reasonably necessary to prevent any consequential loss or damage to the Customer.
- 15.3 The Customer shall indemnify TMB and keep TMB indemnified on a continuing basis from and against all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection herewith arising from the condition or use of the Goods in the event and to the extent of that damage, injury or loss shall have been occasioned partly or wholly by the carelessness of the Customer, its servants or agents and any breach by the Customer of its obligations to TMB hereunder.

16. PATENTS, TRADEMARKS, ETC

- 16.1 The Goods are sold subject to the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods in any part of the world; and the Customer will in this respect accept such title to the Goods as TMB may have.

16.2 Where the Goods have been manufactured or constructed according to designs or configurations or by processes specified or supplied by the Customer, the Customer represents and warrants to TMB that the Goods as so designed or configured and/or the processes so used do not infringe the rights of any persons, whether in respect of any patent, trademark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods or the use of such processes in any part of the world. The Customer shall indemnify TMB and keep TMB indemnified on a continuing basis from and against all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses which TMB may suffer or incur in connection with any claim by which any third party alleging facts which if established would indicate a breach of the representations and warranties in this sub-clause

17. TERMINATION

- 17.1 If the Customer fails to take and pay for Goods sold in accordance with the Contract TMB shall be entitled to treat the Contract as repudiated. Without prejudice to TMB's right to recover from the Customer by way of damages any loss or expense which TMB may suffer or incur by reason of the Customer's default, TMB shall be entitled to dispose of the Goods as it shall think fit and shall not be under any liability to account to the Customer for the price received therefore or otherwise.
- 17.2 TMB shall be entitled immediately to terminate the Contract at any time upon occurrence of any of the events specified in clause 11.2. Upon any such termination TMB shall be entitled to be paid the price of the Goods purchased by TMB or supplied to the date of the cancellation and the Customer shall take over and pay for at the current price such Goods as have been allocated by TMB to the Contract.