

Mabey Hire Limited General Terms and Conditions

These general terms and conditions apply to the full breadth of Mabey Hire Limited's activities and will apply to the actual equipment being hired or sold and/or in relation to any services to be provided under the individual customer Quotation or Order.

1. Interpretation

1.1. The following **definitions** shall apply to these terms and conditions:

Additional Charges: any additional charges payable pursuant to this Agreement including but not limited to all costs in relation to loading, unloading, installation or erection, and transportation as may be amended from time to time in accordance with this Agreement.

Agreement: The Quotation (including any specific terms contained therein) together with these terms and conditions which together contain the contractual terms that apply to the Order.

Business Day: a day other than a Saturday, Sunday, bank holiday, Good Friday or Christmas Day.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Confidential Information: means all information concerning the business affairs, customers, clients or suppliers of the other party.

Customer: the party named in the Quotation as customer.

Damages Charges: means all costs, losses and expenses incurred by MHL in the event of damage to the Equipment during the Hire Period which for the avoidance of doubt, may include the replacement value of the Equipment.

Delay Charges: additional reasonable charges payable by the Customer to MHL which may be charged to the Customer at the discretion of MHL in the event of delay(s) to the Equipment being Unloaded or Reloaded resulting from unsuitable loading and/or unloading facilities at Site or other lack of preparedness on the part of the Customer. Unless the amount of Delay Charges is expressly included on the Quotation, Delay Charges shall be in the region of £100 to cover the first hour of delay and £200 for each additional hour of delay, these values are subject to change at the discretion of MHL.

Delivery: means when the Equipment arrives at the Site or the Customer otherwise takes delivery in accordance with the Quotation.

Delivery Date: the date of Delivery to the Customer as agreed between MHL and Customer in writing.

Deposit: the deposit amount (if any) set out in the Quotation agreed by the parties against default by the Customer of payment of the Price (or any part of it) or any loss of or damage to the Equipment.

Due Date: 30 days from the date of the invoice.

Equipment: the items of equipment listed in the Quotation, all substitutions, replacements or renewals of such equipment and all related accessories, ancillaries, consumables, manuals and instructions provided.

Hire Charges: the payments to be made or made by the Customer for hire of the Equipment during the Hire Period at the rates set out in the Quotation as may be amended from time to time in accordance with this Agreement. Where only part of the Equipment is:

- ready for collection at the time of collection by MHL; or
- returned to a MHL depot by the Customer;

as applicable, the Hire Charges for the uncollected or outstanding Equipment shall continue to apply until such Equipment is made ready for collection by MHL and MHL is notified of its availability for collection or is returned by the Customer (as applicable).

Hire Period: the hire period set out in the Quotation for a duration not less than the Minimum Hire Period and computed from the Delivery Date and continuing until all Equipment is returned to a MHL depot by the Customer or, where MHL is collecting, until all Equipment is collected by MHL.

Material Defect: means a defect which substantially deprives the Customer from use of the Equipment for the purpose for which it was intended.

MHL: Mabey Hire Limited (Company Registration Number 06950075) whose registered office is at Scout Hill, Ravensthorpe, Dewsbury WF13 3EJ.

Minimum Hire Period: two full calendar weeks.

Order: means the Customer's order for Equipment and/or Services as detailed on the Quotation.

Price: means:

- (a) the Hire Charges and/or
- (b) the Sale Price (if relevant) and/or
- (c) the Additional Charges and/or
- (d) any other payments made by or on behalf of the Customer for the provision of any Services as set out in the Quotation or as otherwise agreed with MHL in writing.

Quotation: the final priced quotation from MHL to the Customer including any supplemental or ancillary information provided by MHL to the Customer.

Ready for Collection: means properly packaged in accordance with MHL's requirements in relation thereto.

Reloading: means safe, correct and proper loading of the Equipment by the Customer onto MHL transportation following all directions provide by MHL on the agreed date for collection of the Equipment by MHL and where used in this Agreement, the terms Reloaded and Reload shall be construed accordingly.

Sale Price: the payments to be made or made by the Customer in consideration for the sale of the Equipment by MHL as set out in the Quotation.

Second Hand Sales: the sale of used or ex-fleet equipment on a warranty-free basis.

Services: the service(s) described in the Quotation or as otherwise agreed between the parties in writing.

Site: any site address and location specified in the Quotation or as otherwise agreed in writing by MHL.

Third Party: means any person, other than the Customer, having a legal or equitable interest in the land or building on which the Equipment is attached (including but not limited to an owner or tenant).

Total Charges: means the Price, any Delay Charges, any Damages Charges and any other amounts for which the Customer is liable to pay MHL under this Agreement.

Unloading: means safe, correct and proper unloading of the Equipment by the Customer on the Delivery Date and where used in this Agreement, the terms Unloaded and Unload shall be construed accordingly.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

- 1.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 Reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.4 A reference to **writing** or **written** excludes fax, text message or social media applications such as WhatsApp, but not email.
- 1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.6 A reference to **this Agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as may be varied from time to time.

2.

2. Equipment Hire and Services Provision

- 2.1. MHL shall hire the Equipment and/or provide the Services to the Customer subject to and in accordance with the provisions of this Agreement.
- 2.2. Where the Services to be provided by MHL includes a product advisor and/or engineering support services, MHL's responsibility shall be strictly limited to the provision of technical advice in relation to the Equipment, assembly and installation in reliance on the project specific information provided by the Customer. MHL's responsibility to provide the Services shall be limited accordingly and shall not extend to other matters including but not limited to managing and/or supervising Customer works, Customer personnel or health and safety or other regulatory matters.
- 2.3. Where the Services to be provided by MHL include design, any design shall be provided by MHL exercising reasonable skill and care, based on the information supplied by the Customer at enquiry. Once the design has been issued, it shall be the sole responsibility of the Customer to verify the adequacy of the design for the purpose for which the Equipment is required and MHL shall have no liability whatsoever to the Client for the adequacy of the design.

3. Price Payments and Deposits

- 3.1. The Customer shall pay the Total Charges to MHL. Unless otherwise specified in the Quotation, or otherwise agreed in writing with MHL:
 - 3.1.1. all payments shall be made in Pounds Sterling (£GBP).
 - 3.1.2. Subject to clause 3.1.4, where this Agreement relates to hire, the Hire Charges shall be payable monthly in advance.
 - 3.1.3. Subject to prior approval of the Customer's credit application (at MHL's discretion), MHL may invoice the Customer for Hire Charges in arrears for the Hire Period, except for the charges for the Minimum Hire Period, which shall be included in the first invoice and payable in advance.
 - 3.1.4. Where this Agreement relates to sales of Equipment, payment of the Sale Price shall be made by the Customer to MHL in advance in full, unless otherwise agreed and specified in the Quotation. Delivery of the Equipment shall be arranged with the Customer once the full payment has been received in cleared funds in MHL's specified bank account as detailed on the invoice.
 - 3.1.5. Save for MHL's invoice in relation to the Minimum Hire Period (if applicable), which shall be due and payable by the Customer prior to Delivery, invoices must be paid by the Customer by the Due Date. Where a Customer fails to make a payment due to MHL by the Due Date then without limiting MHL's remedies under clause 9 (Termination), the Customer shall pay interest on the overdue sum from the Due Date until payment of the overdue sum has been received by MHL whether before or after judgment. Interest under this clause shall accrue each day at 4% a year above Barclays Bank base rate from time to time, and at 4% a year for any period when that base rate is below 0%.

- 3.2. The Price is exclusive of VAT which shall be payable by the Customer at the same time as the payment(s) for the Price at the rate prescribed by law.
- 3.3. All amounts due under this Agreement shall be paid in full without any entitlement to set-off, counterclaim, retention, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 3.4. Where a Deposit has been agreed between the parties, the Customer shall, prior to the agreed Delivery Date, pay the Deposit to MHL.
- 3.5. If the Customer fails to make any payment under this Agreement by the Due Date and/or causes any loss and/or damage to the Equipment (in whole or in part), MHL shall be entitled to use the Deposit (or part thereof) as full or part remedy against such default, loss or damage. Subject to MHL's entitlement to use the Deposit as set out above, the Deposit (or balance of the Deposit) shall be refunded to the Customer within 10 Business Days of the end of the Hire Period.
- 3.6. The Price shall be increased automatically on the anniversary of the date of the first delivery and each subsequent year, in line with increases in the Retail Prices Index.

4. Delivery and Collection

- 4.1. MHL shall notify the Customer when the Equipment is ready for delivery or collection. Provided that payment has been received by MHL in accordance with clause 3 (payment) and subject to clause 4.3 below, MHL shall use all reasonable endeavours to meet the Delivery Date.
- 4.2. The Customer shall ensure that a duly authorised representative of the Customer shall be present at the Delivery and Unloading and, if specified as a Service in the Quotation, at the installation of the Equipment. Acceptance of the Equipment and installation (as applicable) by the representative shall constitute conclusive evidence that the Customer has fully examined the Equipment, has found it to be in good condition and complete. The Customer's duly authorised representative shall sign a receipt confirming acceptance. For the purposes of this clause, the Customer's representative shall be deemed to be duly authorised if they are present for at the Unloading and installation (as applicable).
- 4.3. MHL shall be responsible for loading the Equipment at MHL's premises and, where Delivery is to be at the Site, transportation to the Site.
- 4.4. The Customer shall:
 - 4.4.1. be responsible for the Unloading and (in the case of hire) Reloading of the Equipment;
and
 - 4.4.2. provide all requisite materials, facilities, access and suitable working conditions to enable the Equipment to be Unloaded and where applicable, for installation to be carried out safely and expeditiously by the Customer.

- 4.5. Where Unloading on the Delivery Date is delayed due to unsuitable unloading facilities at the Site or other lack of Customer preparedness, MHL reserves the right to charge the Delay Charges.
- 4.6. If the Customer fails to comply with its obligations under clause 4 in respect of Delivery and Unloading on the Delivery Date then:
 - 4.6.1. Hire Charges shall remain payable from the Delivery Date; and
 - 4.6.2. MHL shall store the Equipment until re-delivery takes place and the Equipment is Unloaded and MHL shall charge the Customer for and the Customer shall pay all related costs and expenses (including but not limited to insurance and any Delay Charges).
- 4.7. Where the Site is outside of the United Kingdom, and without prejudice to the generality of clause 4, the Equipment shall be delivered as per the Incoterms specified in the Quotation. Any liability of MHL for non-delivery of the Equipment shall be limited to providing replacement Equipment within a reasonable time or issuing a credit note against any invoice raised for any such Equipment that is not delivered.
- 4.8. Where MHL has agreed to collect the Equipment at the end of the Hire Period, the Customer shall notify MHL when the Equipment is Ready for Collection.
- 4.9. MHL shall use reasonable endeavours to attend the Site to collect the Equipment as soon as is practicable following notification from the Customer.
- 4.10. In the event that MHL attends the Site and the Equipment is not Ready for Collection then:
 - 4.10.1. Hire Charges shall continue; and
 - 4.10.2. Delay Charges shall be payable by the Customer until such time as the Equipment is Ready for Delivery. In the event that MHL has to make a return visit to collect the Equipment, the Customer shall be liable to pay MHL its costs incurred in making the return visit.
- 4.11. If the Equipment is found to be in an unsatisfactory condition upon unpackaging at the MHL depot, the Customer shall be liable to pay Damages Charges to MHL.

5. Title, Risk and Ownership

- 5.1. Where this Agreement relates to hire of Equipment:
 - 5.1.1. the Equipment shall at all times remain the property of MHL, and the Customer shall have no right, title or interest in or to the Equipment (save the right of possession and the use of the Equipment subject to the terms of this Agreement). During the Hire Period the Customer shall hold the Equipment as fiduciary bailee for MHL and shall maintain the Equipment in good order and condition.
 - 5.1.2. 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. During the Hire Period, the Customer shall maintain at its own expense, insurance for the Equipment an amount equal to the full new replacement value of the Equipment) on fully comprehensive terms (including third party and public liability) against loss, theft, damage or destruction however caused. The Customer shall on

demand supply copies of the relevant insurance policies to MHL together with proof of premium payment. The Customer shall be responsible for any deductible due on any insurance claims.

5.1.3. The Customer shall give immediate written notice to MHL in the event of any loss, theft, damage or destruction to the Equipment during the Hire Period, the Customer shall continue to pay the Hire Charges until a resolution is made.

5.2. Where this Agreement relates to the sale of Equipment:

5.2.1. the Equipment shall be at the Customer's risk as per the Incoterm specified in the Quotation. Where no Incoterm or other delivery terms are specified in the Quotation the risk passes to the Customer on the Delivery Date; and

5.2.2. title to the Equipment will pass as per the Incoterm specified in the Quotation. Where no Incoterm is specified in the Quotation title will pass when MHL has received full payment for the Equipment in cleared funds in MHL's UK bank account. Until title has passed the Customer must maintain the Equipment in good condition and hold the Equipment as fiduciary bailee for MHL.

6. Customer's Responsibilities

6.1. The Customer shall comply with all applicable laws, orders and regulations and good industry practice relating to safety, purpose, possession and use of the Equipment.

6.2. Notwithstanding its other obligations under this Agreement, where this Agreement relates to the hire of Equipment, the Customer shall:

6.2.1. ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, is not overloaded, or overworked, and is operated in a correct and proper manner by trained and competent staff in accordance with the job-specific drawings, operating instructions, technical materials and product guides provided by MHL, industry-standard safe practices and applicable laws;

6.2.2. take into account the suitability of the ground conditions, including but not limited to, the stability of the ground, soil types and shall be solely responsible for determining whether the Equipment is appropriate for the Customer's project;

6.2.3. ensure that users of the Equipment shall not combine, connect or use the Equipment with components not supplied by MHL under this Agreement specifically for that purpose (except as may be specifically required and authorised by MHL for the safe and correct use of the Equipment);

6.2.4. ensure that that the Equipment is at all times safe and without risk to health when it is being installed, used, cleaned or maintained by the Customer and those under the Customer's direction during the Hire Period;

6.2.5. pay for the replacement by MHL of worn, damaged and lost parts.

6.2.6. pay any Damages Charges;

6.2.7. make no alteration to the Equipment;

- 6.2.8. keep MHL fully informed of all material matters relating to the Equipment including any requirement for MHL to perform maintenance on the Equipment;
- 6.2.9. keep the Equipment at the Site and shall not move any part of the Equipment to any other location without MHL's prior written consent;
- 6.2.10. permit MHL or its duly authorised representative to inspect the Equipment at all reasonable times and upon reasonable notice;
- 6.2.11. not part with control of, sell or offer for sale, underlet or lend Equipment or allow the creation of any mortgage, charge lien or other security interest in respect of it;
- 6.2.12. save as may be required in the normal course use of the Equipment, not without MHL's prior written consent, attach the Equipment to any land or building. If the Equipment does become attached to any land or building then the Customer shall ensure that the Equipment must be capable of being removed without material injury to the Equipment and such land or building and the Customer shall make good any damage caused by the attachment and removal of the Equipment and shall indemnify and hold MHL harmless against all losses, costs or expenses which may be incurred by MHL as a result of such fixture or removal;
- 6.2.13. not do, or permit to be done, anything which will or may jeopardise MHL's right, title or interest in the Equipment and, where the Equipment has become attached to any land or building, the Customer shall take steps to ensure that MHL may enter the land or building and recover the Equipment. The Customer shall procure, from each Third Party, a written waiver in favour of MHL, confirming that that Third Party shall not claim any rights in relation to the Equipment (deemed ownership or otherwise) which may arise as a result of its attachment and a right for MHL to enter onto the land or building to remove the Equipment;
- 6.2.14. not suffer or permit the Equipment to be confiscated, seized or otherwise removed from its possession or control. In the event that the Equipment is confiscated, seized or otherwise removed, the Customer shall immediately notify MHL and the Customer shall at its sole expense use its best endeavours to procure an immediate release and return of the Equipment. The Customer shall indemnify MHL on demand against all losses, costs, charges, damages and expenses reasonably incurred as a result of such confiscation, seizure or other removal including but not limited to the replacement value of the Equipment and 100% of the Charges for the Hire Period;
- 6.2.15. not use the Equipment for any unlawful purpose;
- 6.2.16. ensure that at all times the Equipment remains identifiable as being MHL's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment and shall not deface, remove or obscure any identifying mark or packaging on or relating to the Equipment;
- 6.2.17. arrange for collection by MHL at the end of the Hire Period and Reload the Equipment or return the Equipment to MHL depot. For the avoidance of doubt, the Hire Period shall not expire until the Equipment is in the safe possession of MHL; and

- 6.2.18. not do or permit to be done anything which could invalidate the insurances referred to in clause 5.1.2.
- 6.3. Where this Agreement relates to hire of Equipment, the Customer acknowledges that any advice for the use of the Equipment, any assumptions made by MHL, or any related configuration given by MHL, is based solely on the loadings and statistical information provided by the Customer. No attempt has, will be or can be, made by MHL to check the validity of the Customer information and/or to ascertain what further factors should be taken into account. Any configurations suggested by MHL are guidelines only. Any assumptions shall be set out in the Quotation. It is Customer's responsibility to ensure that information is complete and accurate in all respects.
- 6.4. The Customer acknowledges that MHL shall not be liable for any loss of or damage to the Equipment during the Hire Period.
- 6.5. The Customer shall indemnify MHL in full against all liabilities, costs, expenses, damages and losses (including any direct or indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by MHL arising out of or in connection with any loss of or damage to the Equipment during the Hire Period and any breach, default or other failure by the Customer to comply with the terms of this Agreement.

7. Defects

- 7.1. Subject to the provisions of this clause 7, MHL shall ensure that the Equipment shall meet the description and specification set out in the Quotation and that upon Delivery, the Equipment shall be in good condition and complete.
- 7.2. Subject to the provisions of this clause 7, where this Agreement relates to the sale of new Equipment, MHL warrants that the Equipment shall be free from Material Defects for a period of twelve (12) months from the Delivery Date when operated by the Customer under normal conditions and properly maintained in accordance with the original design brief.
- 7.3. MHL shall use all reasonable endeavours to remedy, free of charge, any Material Defect in the Equipment which manifests itself within twelve (12) months from Delivery Date, provided that:
- 7.3.1. the Customer shall notify MHL of any Material Defect in writing within five Business Days of the defect occurring or of becoming aware of the defect;
- 7.3.2. MHL shall be entitled to make a full examination of the alleged Material Defect;
- 7.3.3. if in MHL's reasonable opinion, the Material Defect did not materialise as a result of reasonable wear and tear, misuse, neglect, alteration, mishandling or unauthorised manipulation;

7.3.4. if in MHL's reasonable opinion, the Material Defect did not arise out of any information, design or any other assistance supplied or furnished by the Customer or on its behalf and relied upon by MHL;

7.3.5. the provisions of clause 7.4 below do not apply.

7.4. Where the Equipment comprises or contains equipment and/or components which were not manufactured, fabricated and/or produced by MHL, the Customer shall be entitled only to a defects warranty or other benefit as MHL has received from the manufacturer or fabricator and is entitled to pass through to the Customer.

7.5. If MHL fails to remedy any Material Defect in the Equipment in accordance with this clause 7, MHL shall, at the Customer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Price and, if relevant, return any Deposit (or part thereof) which shall be the Customer's sole remedy.

7.6. MHL's liability to remedy Material Defects in this clause 7 shall not apply in the case of;

7.6.1. Second Hand Sales, and the Customer agrees that in such cases the Equipment is sold by MHL on an "as is" warranty-free basis; and/or

7.6.2. where the Customer has attempted to repair any damaged or defective Equipment.

7.7. MHL shall perform the Services with reasonable skill and care to be expected of a professional offering the same or similar services to the Services.

7.8. Except as set out in this Agreement no other warranties (whether express or implied) apply.

8. Limitation of Liability

8.1. Subject to clause 8.2, MHL's total liability to the Customer arising under or in connection with this Agreement whether in contract, tort (including negligence), misrepresentation, restitution or otherwise shall not exceed the lower of (1) any cap on liability included in the Quotation or (2) ten percent of the Price (10%).

8.2. Nothing in this Agreement limits any liability which cannot legally be limited including liability for:

8.2.1. death or personal injury caused by negligence;

8.2.2. fraud or fraudulent misrepresentation;

8.2.3. breach of the terms implied by section 7 of the Supply of Goods and Services Act 1982;

8.2.4. any other matter in respect of which it would be unlawful for the parties to exclude or restrict liability.

8.3. Subject to clause 8.2, MLH shall not be liable by reason of breach of this Agreement or of statutory duty or tort (including negligence or otherwise) for any indirect or consequential

damage which may be suffered by the Customer in connection with this Agreement, including without limitation any:

- 8.3.1. loss of profits;
- 8.3.2. loss of revenue;
- 8.3.3. loss of sales or business;
- 8.3.4. loss of agreements or contracts;
- 8.3.5. loss of anticipated savings;
- 8.3.6. cost of capital;
- 8.3.7. interruption of operations;
- 8.3.8. loss of use
- 8.3.9. loss of use or corruption of software, data or information;
- 8.3.10. loss of or damage to goodwill; and
- 8.3.11. any financial or economic loss.

8.4. Subject to clause 8.2, all implied terms and conditions as to the quality or performance of the Equipment and any other goods or services provided under this Agreement are, to the fullest extent permitted by law, excluded from this Agreement.

9. Termination

9.1. Without affecting any other right or remedy available to it, MHL may terminate this Agreement with immediate effect:

- 9.1.1. by giving written notice to the Customer if the Customer commits a breach of this Agreement, which if capable of being remedied, has not been remedied within 20 Business Days of the notice specifying the breach and requiring its remedy; and/or
- 9.1.2. if the Customer suspends, or threatens to suspend, payment under this Agreement or is unable to make payment under this Agreement as payments fall due or admits inability to make payment;
- 9.1.3. if the Customer becomes insolvent, enters into any arrangement with its creditors, a winding up petition is issued or a receiver is appointed, or equivalent events occur in any jurisdiction outside the United Kingdom;
- 9.1.4. if there is a change of control of the Customer within the meaning of section 1124 of the Corporation Tax Act 2010.

9.2. On expiry or termination of this Agreement, howsoever arising:

- 9.2.1. where this Agreement relates to hire of Equipment, MHL's consent to the Customer's possession of the Equipment shall terminate.
- 9.2.2. in the case of non-payment by the Customer, MHL may exercise any one or more of the following remedies or any other remedy provided by law or in equity:
 - 9.2.2.1. recover any unpaid amounts by the Customer which amounts shall become due and payable to MHL immediately; including Hire Charges for the Hire Period and other sums due but unpaid at the date of termination together with interest in accordance with clause 3.1.5 and any other costs and

expenses incurred by MHL in recovering the Equipment or in collecting any sums due under this Agreement (including but not limited to any storage, insurance, repair, transport, legal costs);

9.2.2.2. enter the Site or other location where the Equipment is held and take possession of the Equipment or the Equipment as relevant (to the extent it has not already been paid for in full); and

9.2.2.3. any other legal or equitable remedies available to MHL.

9.3. The terms of this Agreement which are expressly or by implication intended to come into or remain in force on or after the termination of this Agreement shall remain in full force and effect.

9.4. Without affecting any other right or remedy available to it, MHL may terminate this Agreement at will at any time by giving not less than twenty-five (25) Business Days prior written notice to the Customer.

9.5. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

10. Force Majeure

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from exceptional events or circumstances which (a) occurs within the UK (b) is beyond the affected party's control (c) could not reasonably have been provided against, avoided or overcome by the affected party and (d) is not substantially attributable to the other party (**Force Majeure**). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 2 (two) weeks, the party not affected may terminate this Agreement by giving 10 Business days' written notice to the affected party. For the avoidance of doubt, this clause 10 shall not apply where the Customer is unable to use the Equipment during the Hire Period by reason of Force Majeure nor does it excuse the Customer from making payment in accordance with clause 3 for the Force Majeure period.

11. Confidential Information

11.1. Except as permitted by clause 11.2, each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

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

11.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers 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 this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or

advisers to whom it discloses the other party's confidential information comply with clause 11; and

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

11.3. Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

12. Data Protection

MHL's Privacy Policy describes why and how MHL collects, stores, uses and shares the Customer's personal data. MHL's Privacy Policy is available at <https://www.mabeyhire.co.uk/footer-pages/terms-and-conditions>. MHL generally uses customer personal data to comply with its legal and regulatory obligations, for the performance of this Agreement, to take steps at the request of the customer, or for MHL's legitimate interests or those of a third party.

13. Anti-Bribery and Corruption and Competition Law

13.1. The Customer shall comply at all times with all applicable UK anti-bribery and corruption, competition, modern slavery, human trafficking and exploitation laws from time to time in force

13.2. By entering into this Agreement the Customer confirms that it and its owners, officers, employees and agents are not individually or jointly the subject of any financial or trade sanctions imposed by the UK Government from time to time in force and shall indemnify and hold harmless MHL for any and all claims, losses, liabilities, expenses, costs or whatever nature (including reasonable legal costs and expenses) arising directly or indirectly out of this Agreement with the Customer in respect of any breach of any trade or financial sanctions.

14. Intellectual Property Rights

All rights, including any copyright, design right or other intellectual property rights in or related to the Equipment and any related specifications (including but not limited to drawings, product guides, technical data sheets, catalogues or other related printed or digital information or materials) belong to MHL. The Customer has a non-transferable, non-exclusive license to use the Equipment or any related specifications provided by MHL. The Customer shall not disclose any information to a competitor of MHL, shall not copy or disclose the design of the Equipment or otherwise misuse the intellectual property of MHL.

15. Assignment and other dealings

The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

16. Entire Agreement

16.1. This Agreement constitutes the entire agreement between the parties.

16.2. Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

17. Priority

In the event of any inconsistency or conflict between these terms and conditions and the Quotation, these terms and conditions shall prevail unless it is expressly stated in the terms and conditions and/or the Quotation that the Quotation terms shall prevail.

18. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. No partnership or agency

19.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

19.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

20. Further assurance

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

21. Third party rights

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

22. Notices

22.1. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

22.1.1. 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

22.1.2. sent by email to the following addresses (or an address substituted in writing by the party to be served):

22.1.2.1. MHL: Scout Hill, Ravensthorpe, Dewsbury WF13 3EJ

22.1.2.2. Customer: To the Customer contact email address included on the Quotation.

22.2. Any notice shall be deemed to have been received:

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

22.2.2. if 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

22.2.3. if 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 provided always that if an out of office automated email is received in response or a failure to deliver message is received by the sender, the email shall not be deemed to have been delivered.

22.3. This clause shall 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.

23. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall 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. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

24. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

25. Severance

25.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

25.2. If any provision or part-provision of this Agreement is deemed deleted under clause 25.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

26. Governing law and Jurisdiction

26.1. This Agreement 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.

26.2. 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 this Agreement or its subject matter or formation.

27. Dispute Resolution

- 27.1. Notwithstanding the provisions of clause 26, where this Agreement relates to sales outside the United Kingdom, any dispute or claim that arises out of or in connection with this Agreement or its subject matter shall be settled by final and binding arbitration in accordance with the rules of the International Chamber of Commerce. The arbitration shall take place in London, England and shall be conducted in the English language. The parties agree that the United Nations Convention on Contracts for the International Sale of Equipment 1980 (Vienna Convention) does not apply to this Agreement.
- 27.2. Notwithstanding clause 26.2 either party may refer a dispute arising under any construction operations (as defined in the Housing Grants, Construction and Regeneration Act 1996) carried out under this Agreement at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations (as amended), which Part shall take effect as it was incorporated into this clause.

Version updated October 2024