

# Conditions of Hire

## 1. Applicable Conditions

The conditions stated herein shall apply to this Hire Contract entered into between the Hirer and the owner (the Agreements) and shall override any conflicting terms or conditions referred to by the Owner (in any quotation, tender, negotiations or otherwise) unless expressly agreed in writing by an authorized representative of the Hirer. No variation in, or waiver of, or addition to the conditions stated herein shall be binding on the Hirer unless expressly confirmed in writing by an authorized representative of the Hirer.

## 2. Quantity, Quality and Description

Without prejudice to the Hirer's statutory or other rights and remedies, the Equipment shall (a) conform with the quantity, quality and description in the particulars stated overleaf, (b) be of sound materials and workmanship and free of any defect whatsoever, (c) conform in all respects to the specifications, drawings, patterns, designs, samples, or other information relating thereto provided or approved by the Hirer (d) be capable of any standard of performance specified overleaf, and (e) be fit for any intended purpose expressly or impliedly indicated to the Owner and as intended.

## 3. Delivery

The Equipment, which shall be at the Owner's risk until delivery, shall be delivered by the Owner to the delivery address, on the date, at the time and in the manner specified on the front page and, without prejudice to the Hirer's other rights and remedies, the Hirer may terminate the Contract without liability on its part if the Equipment is not delivered to such address, on such date, at such time or in such manner. Such termination may (at the Hirer option) be in relation to the whole or any part of the Equipment (whether already delivered or not). Upon any such termination, the Hirer shall (without prejudice to its other rights and remedies) be entitled to return to the Owner at the Owner's risk and expense any of the Equipment already delivered and to recover from the Owner any monies paid by the Hirer (and any expenditure reasonably incurred by the Hirer in obtaining replacements) in respect of that Equipment for which the Hirer has terminated the Contract. If the Hirer is prevented from taking delivery of Equipment by reason of any strike, lockout, industrial dispute, fire, flood, governmental regulation or other cause whatsoever beyond the Hirer's control, the Hirer shall have the right to suspend delivery of the Equipment without compensation to the Owner. Hire charges shall not be payable during such suspension.

## 4. Right of Rejection

The Hirer reserves the right to examine the Equipment after delivery to, and before acceptance by, the Hirer and to reject any of the Goods if the Hirer considers them defective, inferior or otherwise not in accordance with the Contract. The Hirer shall notify the Owner of any such rejection and the Equipment so rejected shall on and from such notification be at the Owner's risk and shall be collected forthwith by the Owner at the Owner's expense. The Owner shall reimburse the Hirer its costs and expenses involved in handling and inspecting such rejected Equipment and shall (at the Hirer's option and without prejudice to the Hirer's other rights and remedies) without delay replace such rejected Equipment with Equipment which complies in all respects with the Contract.

## 5. Passing of Property

Without prejudice to the Hirer's right of rejection and other rights and remedies, the Equipment shall remain the Property of the Owner on delivery.

## 6. Price and Payment

The Hire unit rate stated overleaf for the Equipment shall be fixed, shall not be subject to any variation (except as accepted in writing signed by an authorised representative, of the Hirer) and shall, unless otherwise stated overleaf, include all costs of packing and protection, transportation, delivery, storage, insurance, taxes, duties, royalties and other expenses of the Owner. Subject to the Equipment having been delivered in accordance with the Contract and not rejected by the Buyer, payment for the Equipment shall be made as specified overleaf.

## 7. Indemnity

The Owner shall indemnify the Hirer against all loss or damage of whatsoever kind suffered by the Hirer howsoever caused which results whether directly or indirectly from the failure of the Owner to comply with the Contract or from the Owner's performance of the Contract (including without limitation the neglect or default of the Owner, its employees, sub-contractors or agents). The Owner shall indemnify and keep indemnified in full the Hirer against any expense, liability, loss, claims and proceedings whatsoever arising under any statute or at common law (including without limitation those in respect of personal injury or the death of the Hirer employees, workers, sub-contractors and any other third parties and those contributed or caused by the negligence of the Hirer, its employees, agents or servants) arising out of or in connection with the Equipment Hire Contract and delivery and transportation in whatever nature and area. Also, the Owner is responsible for giving written notice promptly to the Hirer in case of accident of personal injury or death happened in relation to the Hirer's worker and/or his works. If the Owner fails to give notice the damages incurred by the Hirer shall be all borne by the Owner, in any event, notwithstanding any provisions in the contract. The Owner shall be deemed to have allowed for the costs of such risks in the price of Equipment Hire Contract.

#### 8. Infringement of Patents. etc.

The Owner warrants that its Hire to the Hirer and the use by the Hirer of the Equipment do not and will not constitute an infringement of any patent, registered design, trade mark, trade name or other intellectual property right and the Owner shall indemnify the Hirer from and against all costs, claims, demands or proceedings in respect of any such infringement or alleged infringement.

#### 9. Statutory Regulations and Safety

The Owner warrants that the Equipment (and its quality, construction, manufacture and design) comply in all respects with all relevant requirements of any statutory rule or regulation or other instrument having the force of law (in each case in force at the time of delivery) and that the equipment will be safe and without risk to health when properly used. Acceptance of the equipment by the Hirer shall not be deemed an admission by the Hirer that the Equipment complies with such requirements.

#### 10. Assignment

The Hirer reserves the right to assign the benefit of its rights under the Contract to any person, firm or company during the Term of Hire of the equipment.

#### 11. Termination

The Hirer may without prejudice to its other rights and remedies (including under Condition 3 above) and without incurring any liability to the Owner, terminate the Contract in respect of all or any of the Equipment (whether delivered or not) summarily by notice in writing if (a) the Owner commits a serious breach or, after due warning, continues any breach of its obligation under the Contract, or; (b) any distress, execution or other legal process is levied upon any of the Owner's assets, or, (c) the Owner makes any arrangement or composition with its creditors, or commits an act of bankruptcy or (being a corporation) enters into liquidation or has a winding up petition presented against it, or calls a meeting of its creditors, or suffers the appointment of a receiver in respect of all or any part of its undertaking or assets.

#### 12. Notice of End of Hire Period or Extension of Hire

This agreement shall expire at the end of the hire period. Unless the Hirer issues a new hire order to extend the period of hire, the Owner shall collect the equipment within 3 days of the expiry of the Hire period. If the Hirer chooses to extend the period of hire, he shall issue to the Owner a new hire order at the end of the hire period. The extended hire period shall be on the terms and conditions as the current Contract.

#### 13. Hiring Period and Documentation

The Hiring period shall be calculated from the date of delivery mentioned in this Hire Contract to the date of the instruction to remove the Equipment from the site or expiry of the hire period whichever is first. All copies of delivery orders and/or collection notes must be certified by the authorized representative of the Hirer and stamped with the official company chop of the Hirer. Under no circumstances will any claim for storage, hire, rental, transport or any other charges be entertained after expiry of the rental date unless this Hire Agreement has been formally extended beforehand. No responsibility whatsoever shall be taken by the Hirer for equipment left remaining on site for more than 3 days after expiry of the Hiring period, unless otherwise agreed in writing.

#### 14. Claim

All hired equipment is deemed to have be returned in "as hired" condition and in good order. The Owner Should make proper inspection and joint inspection with the Hirer representative of the equipment upon removal of equipment from site. Any claims of damages shall be waived if claim document shall not be presented to the Hirer within 3 days upon removed of the equipment.

#### 15. Insurance

Employee compensation and third party insurance shall be covered by the Hirer. The Owner shall be responsible for equipment all risks insurance.

#### 16. Waiver

Failure by the Hirer at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by the Hirer of such provisions or any other provision of the Contract.

17. Any dispute or difference arising of or in connection with this Purchase Order shall be resolved by Mediation under the Rules of HKICA first and if fail, shall be resolved by Arbitration.

#### 18. Governing Law

This hire order shall be governed by the construed in all respects in accordance with the laws for the time being in force in Hong Kong Special Administrative Region.

19. According to the Rules for Administration of the List of Approved Contractors for Public Works, the Hirer has advised the Owner that it is not allowed to offer or give any advantage or excessive entertainment to any of the Government employees or members of their family, or to solicit or accept any advantages or excessive entertainment from other agents in relation to the Goods supplied under any Public Works Contract. The Owner shall indemnify and keep indemnified the Hirer form all damages, losses and expenses, direct and indirect, which may result from any breach of the Prevention of Bribery Ordinance.

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