

Hire - Terms and Conditions



1. Interpretation

In this Agreement the following expressions shall have the following meanings:

- "Agreement" this agreement and the schedules to it (and expressions defined in any schedule shall have the same meaning in this Agreement);
- "Default Rate" 2% per month calculated on a daily basis (as well after as before any judgement);
- "Equipment" includes each item thereof and all replacements, renewals, parts, accessories and additions thereto;
- "Hire" Hire of the Equipment subject to the terms of this Agreement;
- "Hire Charges" Presteigne Charter's hire charges shown on its current rate card for the time being or such other charges as may have been agreed between the parties;
- "Hire Period" the period specified in the Schedule;
- "Presteigne Charter" Presteigne Charter Limited.

2. The Hire

- 2.1 Presteigne Charter agrees to let and Hirer to hire Equipment subject to provisions of this Agreement which contains the entire agreement between Presteigne Charter and the Hirer and shall apply to the exclusion of all other terms and conditions and shall not be varied except as confirmed in writing by Presteigne Charter.
- 2.2 Hire shall commence on the Commencement Date and continue for the Hire Period subject to the provisions for earlier termination below. Unless this Agreement otherwise provides, Equipment will be collected on the Commencement Date from and returned at end of Hire to Presteigne Charter's address.
- 2.3 Hire may not be cancelled by Hirer without consent of Presteigne Charter and only on terms that Hirer indemnifies Presteigne Charter in full against all loss (including loss of profit and reimbursement of all costs) incurred by Presteigne Charter prior to or as a result of cancellation.
- 2.4 Hirer acknowledges that Equipment was selected by Hirer as suitable for its purpose and Hirer has not been induced to enter into this Agreement by any prior representation (whether innocently or negligently made) except as specifically contained in this Agreement.
- 2.5 Unless otherwise expressly agreed in writing by Presteigne Charter, all Equipment supplied by Presteigne Charter is supplied on hire in accordance with these terms and no ownership interest in the Equipment shall pass to Hirer or any third party.
- 2.6 Presteigne Charter will use reasonable efforts to ensure Equipment is in good working order on delivery and of satisfactory quality and that any on-site technical services supplied by Presteigne Charter will be provided using reasonable care and skill by persons of appropriate competence and training and in accordance with this Agreement.

3. Hire Charges and Other Payments

- 3.1 Hire Charges shall be paid by Hirer without previous demand to be received in cleared funds on or before due date(s) for payment. Time shall be of the essence in respect of all payments due under this Agreement and shall be treated as paid on the date Presteigne Charter obtains value, shall bear interest at the Default Rate from the date due, expended or incurred until payment and shall be paid without any deduction, set-off or counterclaim whatsoever. Any payment by post shall be at the sole risk of Hirer. Any discounts quoted or agreed may be forfeited at Presteigne Charter's discretion if payment is received after the due date.
- 3.2 Hirer shall remain liable for Hire Charges at the same rate as provided in this Agreement until end of Hire Period or, if later, date of return of Equipment to Presteigne Charter PROVIDED THAT, if Equipment is lost, stolen, damaged or destroyed, Hire Charges shall continue until its repair or replacement (but in such case only not to exceed a further 13 weeks' rental).
- 3.3 Presteigne Charter reserves right to appropriate any payments made (notwithstanding express appropriation by Hirer) to any sums payable to Presteigne Charter under this or any other agreement between the parties.

4. Hirer's Obligations

- 4.1 Hirer undertakes during the continuance of Hire and until return of Equipment to Presteigne Charter:
 - 4.1.1 to take all reasonable care of Equipment to ensure its safety and security and, in event of its loss or damage, to indemnify Presteigne Charter in accordance with Clause 6 below;
 - 4.1.2 to check Equipment before taking into use, to notify Presteigne Charter forthwith of any repair or maintenance required to Equipment and not to permit such repair or maintenance other than by Presteigne Charter or with its authority;
 - 4.1.3 to ensure Equipment is only used in a proper manner without risk to health and safety and not contrary to any law or for any purpose for which Equipment is not designed or normally suitable; and not to make any modification to Equipment, open the outer case (unless required in normal use) or remove any notices or serial numbers on the Equipment;
 - 4.1.4 to permit or procure for Presteigne Charter or its agents access to inspect or remove Equipment;
 - 4.1.5 to notify Presteigne Charter in writing of any change in Hirer's details in this Agreement and upon request to inform Presteigne Charter of the location of Equipment;
 - 4.1.6 if transit of Equipment is arranged by Hirer, to arrange any necessary customs clearances, comply with all applicable import/export regulations and pay all related duties;
 - 4.1.7 to take all reasonable steps to safeguard the health, safety and welfare of Presteigne Charter's personnel while on-site and to conduct and provide Presteigne Charter with copies of all relevant risk assessments and other health and safety documentation;
 - 4.1.8 not to sell, sub-let or otherwise dispose of or part with Equipment or any interest therein or do or permit to be done any act or thing which may jeopardise Presteigne Charter's rights therein but to keep Equipment in its possession and control free from lien, charge or encumbrance so that Equipment shall at all times remain property of Presteigne Charter or its legal owner.
- 4.2 Hirer undertakes (notwithstanding termination of the Hire) to indemnify Presteigne Charter against all liabilities whatsoever arising out of the possession or operation of Equipment by or on behalf of Hirer provided that such indemnity shall not extend to liability for death or personal injury caused by Presteigne Charter's negligence.

5. Equipment Support

Except where Hirer is in default under this Agreement or maintenance or repair is necessitated by wilful abuse, negligence or accident, Presteigne Charter shall maintain Equipment free of charge to Hirer; shall as soon as practicable on request provide replacement Equipment if Presteigne Charter is unable to repair the same (any replacement being for all purposes subject to this Agreement) provided that (unless expressly agreed) Presteigne Charter's liability hereunder shall not extend to the provision of onsite support.

6. Risk and Insurance

- 6.1 The Equipment shall be at the risk of the Hirer from the time of delivery to the Hirer or its carrier, until its return to Presteigne Charter's premises or, if earlier, possession is taken by Presteigne Charter's carrier.
- 6.2 Hirer shall at its own expense insure Equipment with an insurance company of repute (naming Presteigne Charter as a loss payee): against all loss or damage in an amount equal to its new replacement cost; against third party liability; and against liability for any on-going Hire Charges under Clause 3.2; in each case until Equipment is returned to Presteigne Charter in good working order and condition (fair wear and tear excepted) or is at Hirer's cost either repaired or (if not capable of economic repair) insurance proceeds and amount of any excess are received by Presteigne Charter, whichever is the earlier.
- 6.2 Hirer will on request at any time produce to Presteigne Charter the insurance policy and receipt for current premium. If Hirer fails to insure and keep Equipment insured to Presteigne Charter's satisfaction or to produce policy or receipt, Presteigne Charter may (but shall not be obliged to) either: terminate this Agreement without liability to Hirer or itself insure Equipment, in which case Hirer will pay Presteigne Charter on demand any sums

so expended by Presteigne Charter with interest at Default Rate from date of expenditure until repayment including, without limitation, in event of a claim, the amount of the insurance policy excess and of any increased premiums payable by Presteigne Charter as a result of such claim.

- 6.3 Hirer hereby irrevocably authorises Presteigne Charter in name and on behalf of Hirer to make any claims under the insurance in respect of loss of or damage to Equipment; to settle or compromise such claims; and to receive and give good discharge to insurers for any moneys payable.
 - 6.4 Hirer shall not do or allow to be done any act or thing whereby insurance of Equipment may be invalidated.
 - 6.5 In event of loss of or damage to Equipment, Hirer shall notify Presteigne Charter forthwith, assist in making appropriate claims under such insurance and not without Presteigne Charter's consent settle or compromise any claim.
 - 6.6 Presteigne Charter accepts no responsibility for loss or damage to any equipment or materials of the Hirer or any third party, which Presteigne Charter may agree to store or transport, and any such equipment or materials shall at all times be at the Hirer's risk.
- ## 7. Exclusion and Limitation of Liability
- 7.1 Hirer acknowledges that electronic equipment may suffer breakdown or malfunction from time to time without fault and that consequences to Hirer of breach of this Agreement by Presteigne Charter may be disproportionate to Presteigne Charter's Hire Charges. Therefore, Hirer agrees that Presteigne Charter's entire liability to the Hirer in respect of this Agreement and any breach or negligent act or omission (including liability for acts or omissions of Presteigne Charter's employees, agents and sub-contractors) shall be limited as follows:
 - 7.1.1 except as provided in these terms, all conditions, warranties and representations concerning the Equipment, their state, quality, description, fitness for purpose or otherwise are excluded to the fullest extent permitted by law;
 - 7.1.2 Presteigne Charter's liability in respect of each event or series of connected events shall not exceed the total Hire Charges received by Presteigne Charter except that in the case of recorded material, Presteigne Charter's liability shall be limited to the cost of replacing blank media only and in the case of loss of or damage to physical property caused by Presteigne Charter's negligence, Presteigne Charter's liability shall be limited to £1,000,000;
 - 7.1.3 Presteigne Charter will not be liable for any loss, damage or expense caused by any interruption or loss of use of Equipment, increased cost of working, delay, loss of profit or goodwill, special, consequential or indirect damage however caused, even if reasonably foreseeable or Presteigne Charter was advised of the risk of its occurrence;
 - 7.1.4 Presteigne Charter shall have no liability arising out of Hirer's inability to operate the Equipment in accordance with manufacturer's instructions and for its proposed use;
 - 7.1.5 Hirer shall give Presteigne Charter reasonable details of any claim in writing without delay and no later than 30 days of occurrence of the matter giving rise to the claim;
 - 7.1.6 all Equipment agreed to be sold by Presteigne Charter is sold "as is" and no warranty is given as to performance, functionality, fitness for purpose or that it is of satisfactory quality, unless otherwise agreed by Presteigne Charter in writing.
 - 7.1.7 nothing in these terms shall limit or exclude Presteigne Charter's liability in respect of death or personal injury resulting from Presteigne Charter's negligence or for fraud.
 - 7.2 If so requested by Hirer, Presteigne Charter may consider accepting higher limits of liability subject to payment by Hirer of an additional charge.

8. Termination

- 8.1 Hire shall forthwith terminate without notice if Hirer shall (being an individual) die or be subject to an interim order (within meaning of Insolvency Act 1986) or the presentation of a bankruptcy petition; or enter into any arrangement or composition with creditors; or (being a limited company) enter into compulsory or voluntary liquidation (not being for the purpose of reconstruction or amalgamation on terms previously approved by Presteigne Charter in writing); or have a receiver appointed or a petition presented for an administration order; or have any distress, execution or other legal process made in respect of Hirer's property; cease or threaten to cease to carry on business; or if anything analogous to the foregoing under the laws of any jurisdiction shall occur in relation to the Hirer.
- 8.2 Presteigne Charter may serve notice on Hirer terminating Hire forthwith if Hirer: fails to pay any sums payable hereunder in full on the due date; commits a breach of any other provision hereof and (if capable of being remedied) fails to remedy such breach within 7 days after notice from Presteigne Charter requiring the same; or shall cause or permit to be done any act or thing whereby Presteigne Charter's rights in Equipment are prejudiced.
- 8.3 Upon termination, which shall be effective notwithstanding subsequent acceptance by Presteigne Charter of Hire Charges, Hirer shall no longer be in possession of Equipment with Presteigne Charter's consent and (without prejudice to Hirer's obligations under Clauses 3, 4 and 6 and any other rights and remedies of Presteigne Charter under this Agreement) Hirer shall:
 - 8.3.1 at Hirer's expense return Equipment to Presteigne Charter in good working condition (fair wear and tear excepted) and in default Presteigne Charter may forthwith without notice repossess Equipment and for this purpose freely enter any premises occupied by or under control of Hirer;
 - 8.3.2 become immediately liable to pay to Presteigne Charter: all costs and expenses (including without limitation, any legal costs and expenses) incurred by Presteigne Charter in locating, repossessing or restoring Equipment, collecting any sums due or otherwise in obtaining due performance of Hirer's obligations hereunder; all arrears of Hire Charges and other sums payable with interest thereon at Default Rate; and the unpaid balance of the Hire Charges.
- 8.4 Presteigne Charter may terminate Hire without liability to Hirer if performance by Presteigne Charter is prevented by circumstances beyond Presteigne Charter's reasonable control (including, without limitation, fire, flood, trade dispute or industrial action, war, riot, civil disturbance or terrorist act, legal or governmental restriction or embargo). In such event, Hirer shall be liable for Hire Charges, apportioned as appropriate, to date of such termination.

9. General

- 9.1 If Hirer is more than one person, they shall be liable both individually and together.
- 9.2 Each party shall treat as it does its own confidential information all information obtained from the other pursuant to this Agreement which is marked "confidential" or the equivalent or has the necessary quality of confidence about it.
- 9.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than Presteigne Charter and Hirer shall have any rights under or to enforce these terms.
- 9.4 Delay shall not prevent Presteigne Charter enforcing any provision of this Agreement. Any waiver of a breach of this Agreement shall not be operate as a waiver of a later breach of the same or any other provision.
- 9.5 If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected.
- 9.6 Neither party shall assign or otherwise transfer any of its rights or obligations under this Agreement except that Presteigne Charter may sub-contract all or any of its obligations to a competent third party.
- 9.7 Headings in this Agreement are for convenience only and shall not affect interpretation.
- 9.8 Any notice under this Agreement shall be in writing and may be served by hand, pre-paid first class post or airmail, electronic mail or facsimile to its address or facsimile number set out in this Agreement or such other address as is notified for the purpose. A confirming copy of any notice served by electronic mail or facsimile shall be sent by post within 24 hours of transmission.
- 9.9 This Agreement shall be governed and construed in accordance with English law. The parties agree to submit to the non-exclusive jurisdiction of the English Courts.