

1. **GENERAL**  
The following definitions and rules of interpretation apply in these conditions.
- 1.1. Definitions:
  - ABD:** Anthony Best Dynamics Limited registered in England and Wales at Middleton Drive Bradford on Avon, Wiltshire BA15 1GB with company number 1658222.
  - ABD Materials:** has the meaning given in clause 8.5(b).
  - Commencement Date:** has the meaning given in clause 2.2.
  - Conditions:** these terms and conditions as amended from time to time in accordance with clause 19.7.
  - Contract:** the contract between ABD and the Customer for the supply of Goods and Services in accordance with these Conditions.
  - Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
  - Customer:** is the Company, firm, person, Corporation or public authority taking ABD's Goods on hire and includes their successors or personal representatives.
  - Delivery Location:** has the meaning given in clause 4.6.
  - Force Majeure Event:** has the meaning given to it in clause 17.
  - Goods:** the goods (or any part of them) set out in the Order.
  - Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is prepared by ABD and provided to the Customer, or otherwise agreed in writing by ABD.
  - Hire Period:** shall commence from the time when the Goods leave ABD's premises or place where last employed and shall continue until the Goods are received back at ABD's named depot or other agreed location. For the avoidance of doubt the Hire Period includes any time the Goods are being transported to or from site; or are left on site during evenings, nights, weekends, or any Holiday Period.
  - Holiday Period:** covers any cessation of work over Easter, Christmas and the New Year, as well as any other Bank or Public holidays.
  - Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
  - Order:** The Customer's order for the supply of Goods, or Goods and Services as set out in ABD's Purchase Order Confirmation.
  - Purchase Order Confirmation:** a confirmation issued by ABD in response to a purchase order for goods and services issued by the Customer.
  - Services:** the services, to be performed by the operator/person supplied with the Goods.
  - Service Specification:** the description or specification for the Services provided by ABD to the Customer.
  - Working Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.2. Interpretation:
  - (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - (b) A reference to a party includes its [personal representatives,] successors and permitted assigns.
  - (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
  - (d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
  - (e) A reference to writing or written includes fax and email OR but not email.
2. **Basis and Extent of Contract**
  - 2.1. No terms, conditions or warranties other than as specifically set forth herein or in the associated ABD quote or Purchase Order Confirmation shall be deemed to be incorporated or to form part of the Contract or shall otherwise govern the relationship between ABD and the Customer in relation to the hire of the Goods pursuant to this Contract. This excludes all other terms or conditions which the Customer may seek to apply under any order or acknowledgement or acceptance or similar document and supersedes all prior negotiations, representations or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by ABD. ABD and the Customer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract, except that a person who is a successor to or an assignee of the rights of ABD is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).
  - 2.2. The Hire Period shall commence from the time when the Goods leave ABD's premises or place where last employed (**Commencement Date**) and shall continue until the Goods are received back at ABD's named depot or other agreed location but an allowance shall be made of not more than one day's hire charge each way for travelling time (unless otherwise agreed or specified in the Purchase Order Confirmation). If the Goods are used on the day of travelling, full hire rates shall be paid for the period of use on that day. If more than one day is properly and unavoidably occupied in transporting the Goods, a hire charge at idle time rates shall be payable for such extra time, provided that where Goods are hired for a total period of less than one Working Week, the full hire rate shall be paid from the date of despatch to the date of return to ABD's named depot or other agreed location.
  - 2.3. These Conditions apply to the Contract to the exclusion of any other terms which may be implied by law, trade custom, practice or course of dealing.
- 2.4. Any quotation given by ABD shall only valid for a period of 20 Working Days from its date of issue, unless specified otherwise, after which time they may be altered by ABD without giving notice to the Customer.
- 2.5. No variation to the Contract or these Conditions shall be binding unless agreed in writing by the authorised representative of ABD.
- 2.6. ABD's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by ABD in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.7. Any advice or recommendation given by ABD or its employees or agents to the Customer or its employees or agents as to the application or use of the Goods or the performance of Services which is not confirmed in writing by ABD is followed or acted upon entirely at the Customer's own risk, and accordingly, ABD shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.8. Any typographical error, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by ABD shall be subject to correction without any liability on the part of ABD.
- 2.9. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
3. **Goods**
  - 3.1. The Goods are described in ABD's Purchase Order Confirmation and any applicable Goods Specification(s) provided by ABD to the Customer. Acceptance of the Goods or any personnel supplied by ABD on site implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing.
  - 3.2. ABD reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and ABD shall notify the Customer in any such event.
4. **Delivery of Goods**
  - 4.1. The Customer shall be responsible for the unobstructed access and egress to the site, and where applicable any access road to the site and, unless otherwise agreed in writing, for unloading and loading of the Goods at the site or on the access road; and any personnel supplied by ABD for such unloading and / or loading shall be deemed to be under the direction and control of the Customer. Such personnel shall for all purposes in connection with their employment in the unloading and / or loading of the Goods be regarded as the servants or agents of the Customer (but without prejudice to any of the provisions of clause 8) who shall be solely responsible for all claims arising in connection with unloading and / or loading of the Goods by, or with the assistance of, such personnel.
  - 4.2. Unless written notification in writing to the contrary is received by ABD, within 24 hours from the commencement of the Hire Period, from the Customer in case of Goods supplied with an operator within four working days, and in the case of Goods supplied without an operator within three working days, of the Goods being delivered to the site, the Goods shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Contract, provided that where the Goods require to be assembled on site, the periods stated above shall be calculated from the date of completed assembly of the Goods. The Customer shall be responsible for the safe keeping of the Goods, their use in a workmanlike manner and in accordance with ABD's recommendations, and their return on the completion of the Hire Period in equal good order (fair wear and tear excepted).
  - 4.3. The Customer shall at all times when hiring Goods without an ABD operator take all reasonable steps to keep him/herself acquainted with the state and condition of the Goods. If the Goods are used in an unsafe and unsatisfactory state or environment, the Customer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising there from.
  - 4.4. Any inspection report required under the relevant legislation, or a copy thereof, shall be supplied by ABD, if requested by the Customer, and returned on completion of the Hire Period.
  - 4.5. ABD shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, Hire Period and all relevant Customer and ABD reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
  - 4.6. ABD shall, unless otherwise agreed in the Order, arrange for delivery of the Goods to the destination terminal or place of destination set out in the Order, or such other location as the parties may agree (Delivery Location) at any time after ABD notifies the Customer that the Goods are ready to ship.
  - 4.7. Delivery of the Goods shall be completed upon delivery and acceptance of the Goods by ABD's contracted carrier for onward carriage to the terminal or port of destination in accordance with Incoterm Rules 2020 CIP. Performance of the Services shall be undertaken as stated in Purchase Order Confirmation and if not so stated at such location(s) as ABD may determine.
  - 4.8. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. ABD shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide ABD with adequate delivery instructions, access to the site, or any other instructions that are relevant to the supply of the Goods.
  - 4.9. If the Customer fails to take delivery of the Goods within three Working Days of ABD notifying the Customer that the Goods are ready or fails to give ABD adequate instructions by the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of ABD's failure to comply with its obligations under the Contract in respect of the Goods) then, without prejudice to any other right or remedy available to ABD, ABD may: (a) store the Goods for a period of up to 20 Working Days, until the Customer takes delivery and charge the Customer for all related costs and expenses (including insurance); and/or (b) arrange for the return of the Goods to an ABD depot and attempt to re-hire

- them at the best price readily obtainable and account to the Customer for the transportation costs (associated with the delivery and return), the storage charges associated with the delay, and any hire charges associated with the Hire Period that are not recoverable by the re-hire of the goods.
- 4.10. ABD may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract for hire. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5. Servicing and Inspection, Breakdown and Repair**
- 5.1. The Customer shall at all reasonable times allow ABD, their agents or insurers to have access to the Goods to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Customer shall allow such access during the Working Day. ABD reserves the right to charge the Customer for any inspection or maintenance work carried out on the Goods during the Hire Period.
- 5.2. Any breakdown or the unsatisfactory working of or damage to any part of the Goods must be notified immediately to ABD, and confirmed in writing. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by ABD.
- 5.3. The Customer shall not repair, modify or alter the Goods without the prior written permission of ABD (including without limitation the repair or replacement of any consumables). The Customer is responsible for all costs incurred in replacement of consumables (which must meet ABD's specifications) or otherwise be approved by ABD. The Customer is responsible for the cost of spares and/or repairs due to theft, loss or vandalism of the Goods and no allowance or reduction in the hire charges shall be made the breakdown or repair is required because:
- (a) the defect arises because the Customer failed to follow ABD's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (b) the Customer altered or repaired the Goods without the written consent of ABD; or
- (c) the defect arose from fair wear and tear, wilful damage, negligence, misdirection, misuse or abnormal working conditions.
- 5.4. ABD will be responsible for the cost of spares, to the Goods involved in breakdown from all other causes and full allowance for the hire charges set out in the Order will be made to the Customer for any stoppage due to breakdown of the Goods caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination and for all stoppages for normal running repairs in accordance with the terms of the Contract.
- 5.5. In addition to Clause 5.3, the Customer shall be responsible for all other expenses incurred by ABD arising from any breakdown, unsatisfactory working of or damage to any part of the Goods due to the Customer's negligence, misdirection or misuse of the Goods, whether by the Customer or their servants, and for the payment of hire at the idle time rate as defined in clause 10.12, during the period the Goods are necessarily idle due to such breakdown, unsatisfactory working or damage.
- 5.6. No claims will be admitted (other than those allowed for under clause 5.4, or for "Idle Time" as detailed in clause 10.12), for stoppages through causes outside ABD's control, including but not limited to adverse weather and / or ground conditions.
- 6. Title and Risk**
- 6.1. The risk in the Goods shall pass to the Customer, in accordance with Incoterm Rules 2020 CIP, upon ABD's delivery of the Goods to its carrier unless an alternative Incoterm is specified in the Purchase Order Confirmation.
- 6.2. Nothing in the Contract shall operate to transfer the title in the Goods, which shall remain, at all times, with ABD.
- 6.3. The Customer shall not remove, deface or cover up ABD's name plate or mark on the Goods indicating that it is their property, without the prior written permission of ABD.
- 6.4. The Customer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Goods and shall protect the same against distress, execution or seizure and shall indemnify ABD against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition.
- 7. Supply of Services**
- 7.1. When an operator or any person is supplied by ABD with the Goods, ABD shall supply a person competent in operating the Goods or for such purpose for which the person is supplied but such person shall be under the direction and control of the Customer. Such operators or persons shall for all purposes in connection with their employment in the working of the Goods be regarded as the servants or agents of the Customer (but without prejudice to any of the provisions of clause 13) and the Customer shall be solely responsible for all site costs and/or claims arising from and in connection with the operation of the Goods by the said operators / persons.
- 7.2. Such operators or persons supplied by ABD shall not operate any other equipment or machinery or undertake work other than that for which they are supplied by ABD unless previously agreed in writing between ABD and the Customer. ABD shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.3. The Customer shall not allow any other person to operate such Goods without being suitably trained by ABD.
- 7.4. ABD warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. Customer's Obligations**
- 8.1. **The Site:** The Customer is deemed to have knowledge of the site (including the site's access road(s), the property or land where the Goods are to be delivered or collected, loaded or unloaded, where the Goods are to be used, the Services are to be performed and whether there is any electronic or radio interference which may affect the utilization of the Goods, and shall warrant the site is suitable for the use of such Goods. As such, the Customer shall not be entitled to terminate the Contract or receive any reduction in the hire charges or to the Hire Period in the event that the site/ground is deemed unsuitable.
- 8.2. **Customer/Third-Party Property:** The Customer shall at all times remain responsible and liable for all damage to any Customer or third-party property situated within the site, including vehicles or other machinery or tools, soft targets and dummies, and the Customer shall liaise as necessary and comply with all requirements of the relevant property owner, statutory authority or similar body.
- 8.3. **The Goods and Services during the Hire Period:** Each item of Good(s) specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of ABD or otherwise) through any cause whatsoever, shall not entitle the Customer to compensation or allowance for the loss of working time by any other unit or units of Goods working in conjunction therewith, provided that where two or more Goods are expressly hired together as a unit (and specified as such on the Order), such items shall be deemed to be one unit for the purpose of breakdown.
- 8.4. For the duration of the Hire Period (which for the avoidance of doubt includes the time Goods are left on site during a Holiday Period) the Customer shall, subject to the provisions referred to 4,7 and this clause 8:
- (a) be liable for all loss of or damage to the Goods, and shall also fully and completely indemnify ABD and any personnel supplied by ABD in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of storage, transit, transport, unloading, loading or use of the Goods, and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Goods during a Hire Period, hire charges shall be continued at idle time rates as defined in clause 10.12 until settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or idle time charges can be reinstated from the date of that agreement. Should idle time charges be re-instated, the agreed settlement figure remains payable in full.
- (b) co-operate with ABD in all matters relating to the Services;
- (c) provide ABD, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by ABD to provide the Services;
- (d) provide ABD with such information and materials as ABD may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services and/or installation, assembly or use of the Goods as appropriate;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws and provide the personnel, or operator(s) supplied by ABD with appropriate site inductions and/or training;
- (h) keep all materials, equipment, documents and other property of ABD (ABD Materials) at the Customer's premises in safe custody at its own risk, maintain ABD Materials in good condition until returned to ABD, and not dispose of or use ABD Materials other than in accordance with ABD's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 8.5. **The Goods during the Off-Hire Period:** for any periods between hire, where ABD has agreed to leave the Goods in the care of the Customer without charge (hereinafter referred to as Off-Hire Period), the Customer shall:
- (a) be liable for all loss of or damage to the Goods, and shall also fully and completely indemnify ABD in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of storage, transit, transport, unloading, loading use or unauthorised use of the Goods, and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Goods during an Off-Hire Period, the Customer shall be liable to pay full Hire Charges for the remainder of the Off-Hire Period, and full Hire Charges for the subsequent agreed Hire Period without reduction. Payment must be made within 21 calendar days of the earlier of the date of the date of loss or damage or the date of the return of the Goods, if the payment remains outstanding ABD shall be entitled to interest in accordance with clause 10.11, and should payment remain outstanding beyond the end of the subsequent hire period, ABD shall be entitled to reinstate Hire Charges from the end of the subsequent period until the Goods are returned and payment is made in full.
- (b) keep all materials, equipment, documents and other property of ABD (ABD Materials) at the Customer's premises in safe custody at its own risk, maintain ABD Materials in good condition until returned to ABD, and not dispose of or use ABD Materials other than in accordance with ABD's written instructions or authorisation.
- 8.6. For the avoidance of doubt, notwithstanding any agreement by ABD to waive hire charges after any agreed period of the Goods, the Customer's obligations specified under clauses 8.2 to 8.4 shall continue for the duration of the Hire Period/Off-Hire Period.
- 8.7. Notwithstanding the above the Customer shall not be responsible for damage, loss or injury when it arises during the assembly and/or dismantling of any goods where such goods require to be completely physically assembled/dismantled on site, always provided that such assembly/dismantling is under the exclusive control of ABD or their Agent.
- 8.8. **Re-Hire:** Neither the Goods nor any part thereof shall be re-hired, sub-let, or lent to any third party without the prior written permission of ABD.
- 8.9. **Kept on Site:** The Goods shall not be moved from the site to which it was delivered or consigned without the prior written permission of ABD.
- 8.10. **Anti-bribery:** The Customer shall during the term of this agreement:
- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out outside of the UK;
- (c) establish, maintain and enforce its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure (compliance with the Relevant Requirements and clause 8.10 b);

- (d) notify ABD (in writing) if it becomes aware of any breach of clause 8.10(a) or clause 8.10(b), or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of this Contract; and
- (e) immediately notify ABD (in writing) if a public official becomes an officer or employee of the Customer and the Customer warrants that it has no public officials as direct or indirect owners, officers or employees at the date of the Contract. Breach of this clause 8.10 shall be deemed a material breach under clause 15.1 (a).
- 9. Basis of Charging**
- 9.1. **Goods Hired on a Daily basis:** The full daily rate will be charged on a daily basis irrespective of the hours worked, if the Goods works for any time during the Working Day then the whole of that Working Day shall be charged as working time.
- 9.2. **Goods Hired on a weekly or monthly basis:** The weekly or monthly rate shall be charged irrespective of the number of hours worked, except in the case of breakdown for which ABD is responsible when an allowance pro rata of the agreed weekly rate or pro rata of the agreed monthly rate will be made for each full Working Day broken down, which shall be charged as Idle Time.
- 9.3. The Customer shall render to ABD for each Working Week an accurate statement of the number of hours the Goods have been used each day. When any personnel, or operator is supplied by ABD, the Customer shall sign their time record sheets. The signature of the Customer's representative shall bind the Customer to accept the hours shown on the time records sheets.
- 9.4. Full allowance will be made for each whole Working Day lost due to breakdown of the Goods resulting from mechanical or electrical faults or due to the absence of ABD personnel or other operator to be supplied by ABD except where breakdown is due to acts or omissions of third parties and / or the Customer's misuse, misdirection or negligence, subject however to the provisions of clause 5 of these conditions.
- 10. Charges and Terms of Payment**
- 10.1. The price of the Goods or the Services shall be ABD's quoted price. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by ABD to the Customer, the Customer shall, on receipt of a valid VAT invoice from ABD, pay to ABD such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services at the same time as payment is due for the supply of those Goods or Services.
- 10.2. ABD reserves the right, on giving notice to the Customer at any time before delivery of the Goods or the performance of the Services, to increase the price of the Goods or the Services to reflect any increase in the cost to ABD which is due to any change in delivery dates, quantities or specifications for the Goods or associated Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give ABD adequate information or instructions or materials (where the Contract so provides).
- 10.3. Except as otherwise stated in any Purchase Order Confirmation given by ABD and unless otherwise agreed in writing between the Customer and ABD, all prices for the Goods shall be inclusive of ABD's obligations under Incoterms Rules 2020: for delivery on a CIP basis.
- 10.4. The price is exclusive of any and of all costs, charges or taxes associated with the importation, customs clearance of the Goods which the Customer shall be additionally liable to pay to the Company.
- 10.5. The charges for all additional Services not otherwise detailed in the Order, shall be calculated on a time and materials basis:
- (a) the charges shall be calculated in accordance with ABD's daily fee rates, can be provided to the Customer on request;
- (b) ABD's daily fee rates for each individual person are calculated on the basis of an seven-hour day from 9.00 am to 5.00 pm worked on Working Days;
- (c) ABD shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom ABD engages in connection with any additional Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by ABD for the performance of the Services, and for the cost of any materials.
- 10.6. Subject to any special terms agreed in the Order between ABD and the Customer, ABD shall be entitled to invoice the Customer for the price of the Goods and/or Services on or at any time after delivery of the Goods or the performance of the Services, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event ABD shall be entitled to invoice the Customer for the price at any time after ABD has notified the Customer that the Goods are ready for collection or (as the case may be) ABD has tendered delivery of the Goods.
- 10.7. The Customer shall pay the cost of and if required ABD, arrange transport of, the Goods from ABD's depot or other agreed location to the site and return to ABD's named depot or other agreed location on completion of the Hire Period.
- 10.8. The Customer shall pay the price for the Goods and/or Services in pounds sterling within 30 days of the date of ABD's invoice notwithstanding that delivery may not have taken place. The time of payment of the price shall be of the essence of the Contract.
- 10.9. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to ABD, ABD shall be entitled to:
- (a) cancel the Contract or suspend any further performance of the Work;
- (b) enter the Customer's premises and take possession of the Goods. Until they have been returned, the Customer shall be In the event clause 10.8 is applied the Customer shall remain responsible for the Hire Charges associated with the period of time the Goods remain on the Customer's premises, all costs associated with the transportation of the Goods to and from the Customer site, the travel costs of any ABD personnel needed to effect clause 10,8(b); and interest of the outstanding invoices in accordance with 10.11 below.
- 10.10. The Customer shall pay the price for the Goods and/or Services in pounds sterling within 30 days of the date of ABD's invoice notwithstanding that delivery may not have taken place. The time of payment of the price shall be of the essence of the Contract.
- 10.11. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10.12. ABD reserves the right to charge the Customer for the late payment of any outstanding invoices under the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent legislation.
- Idle Time**
- 10.13. When the Goods are prevented from working for a complete Working day, the hire charges shall be two thirds of the hire rate or such other idle time rate as is agreed in writing by ABD for the period during which the Goods are not in use. If the Goods works for any time during the Working Day then the whole of that Working Day shall be charged as working time. In any case no period less than one Working Day shall be reckoned as idle time. Full rate(s) will be charged for the operator, regardless of idle time.
- 11. Intellectual property rights**
- 11.1. All Intellectual Property Rights in or arising out of or in connection with the Goods, Services or any associated documentation (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by ABD.
- 11.2. ABD grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to receive and use the Services and associated paperwork in its business.
- 11.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.
- 12. Data protection**
- 12.1. The following definitions apply in this clause 12:
- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom
- 12.2. Both Parties acknowledge that there is no processing of Personal Data associated with or intrinsic to the performance of the Contract. The incidental exchange of Personal Data for the purpose of communication to give effect to the Contract or the business relationship is not considered to be processing of Personal Data by either Party on behalf of the other.
- 12.3. The Customer shall notify ABD promptly if it considers that any of ABD's instructions obligate the Customer to take on the role of Processor under the Data Protection Legislation beyond that which is contemplated in this clause.
- 12.4. Where the Contract is amended to include processing of Personal Data as a Joint Controller, the Parties agree that they shall amend the conditions to include appropriate contractual clauses, including but not limited to clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data.
- 12.5. Notwithstanding the contents of this clause 12, both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13. Confidentiality**
- 13.1. Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.
- 13.2. Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts 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 the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 14. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 14.1. The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.2. Except for liability on the part of ABD which is expressly provided for in the Contract (including these clauses): (a) ABD shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond his reasonable control; (b) ABD shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Customer's loss of profit, loss of use of the Goods or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and / or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and (c) whenever the Contract (including these clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Customer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made.

- (d) For the avoidance of doubt, nothing in these conditions limits or seeks to exclude ABD's liability for claims of death or personal injury caused by ABD's negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.
- The foregoing limitations and exclusions will not apply to the extent that liability cannot be limited or excluded according to applicable law.
- 14.3. Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 14.4. Subject to clause 14.2, an 14.3, ABD's total liability to the Customer shall not exceed the total charges. The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of Goods and Services actually supplied by ABD, whether or not invoiced to the Customer.
- 14.5. This clause 14 shall survive termination of the Contract.
- 15. Termination**
- 15.1. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- The other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 15 days after receipt of notice in writing to do so;
  - The other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - The other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 15.2. Without affecting any other right or remedy available to it, ABD may terminate the Contract forthwith by written notice to the Customer if one or more of the following events occur:
- There is a change of Control of the Customer;
  - The Customer defaults in punctual payment of any sum due to ABD for hire of Goods or other charges payable pursuant to these conditions;
  - The Customer fails to observe and perform the terms and conditions of the Contract;
  - The Customer does or causes to be done or permit or suffer any act or thing whereby ABD's rights in the Goods may be prejudiced or put into jeopardy.
- 15.3. In the event of termination: (i) The Customer must give ABD or his agents, immediate unobstructed access to recover the Goods. (ii) ABD shall be entitled to claim the hire charges outstanding as at the date of termination of the hire under this clause and the return transport charges under clause 10.7.
- 15.4. The rights under clauses 15.2 and 15.3 above: (i) May be exercised notwithstanding that ABD may have waived some previous default or matter of the same or a like nature, (ii) Shall not affect ABD's right to claim damages for breach of Contract or recover any sums due under the Contract as a debt.
- 15.5. If the Customer does not make payment of a sum by the final date on which payment is due to be made, ABD has the right to suspend performance of its obligations under the Contract. The right to suspend may not be exercised without first giving to the Customer at least 7 days notice in writing of ABD's intention to suspend performance, stating the ground or grounds on which ABD intends to suspend performance. The right to suspend performance will cease when the Customer makes payment in full of the amount due.
- 16. Consequence of termination**
- 16.1. On termination of the Contract:
- If the Goods are not made available for collection as agreed between the parties, such Goods shall be deemed with immediate effect to be placed back on hire. The Customer shall be responsible for the safe keeping of the Goods in accordance with clause 4.2, and for all the reasonable costs and expenses incurred by ABD in seeking to collect such Goods.
  - Upon the completion of the Hire Period, the Customer shall clean the Goods, removing any debris, fuel or contaminates before the Goods are repackaged for transport. The Customer should use the packing materials, crates and boxes used to deliver the Goods to the Customer at the start of the Hire Period. In the event these cannot be re-used the Customer must request replacement packing materials from ABD. The Customer shall be liable for any costs, liabilities and expenses, including the cost of providing replacement packaging, incurred by ABD should the Customer fail to comply with this clause.
  - The Customer shall return the Goods, all of ABD Materials and any associated documentation. If the Customer fails to do so, then ABD reserves the right to enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 16.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and 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 the Contract which existed at or before the date of termination or expiry.
- 16.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 17. Force Majeure**
- Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (**a Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 26 weeks, the party not affected may terminate the Contract by giving 10 days' written notice to the affected party.
- 18. Other Customer Default**
- 18.1. If ABD's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- Without limiting or affecting any other right or remedy available to it, ABD shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays ABD's performance of any of its obligations;
  - ABD shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ABD's failure or delay to perform any of its obligations as set out in this clause 18.1; and
  - the Customer shall reimburse ABD on written demand for any costs or losses sustained or incurred by ABD arising directly or indirectly from the Customer Default.
- 19. General**
- 19.1. Assignment and other dealings**
- ABD may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
  - 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 the Contract without the prior written consent of ABD which shall not be unreasonably withheld.
- 19.2. Notices.**
- Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be: (i) 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 (ii) sent by email to the contact addresses specified in Purchase Order Confirmation.
  - Any notice or communication shall be deemed to have been received: (i) if delivered by hand, at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or (iii) 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. In this clause 19.2(b)(iii), business hours mean 9.00am to 5.00pm Monday to Friday on a Working Day.
  - This clause does 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.
- 19.3. **Severance.** If any provision or part-provision of the Contract 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 Contract. If any provision or part provision of the Contract is deemed deleted under this clause 19.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 19.4. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract 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.
- 19.5. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 19.6. **Entire agreement.**
- The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misrepresentation] based on any statement in the Contract.
  - Nothing in this clause shall limit or exclude any liability for fraud.
- 19.7. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 19.8. **Governing law.** The Contract 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.
- 19.9. **Jurisdiction.** 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 the Contract or its subject matter or formation.