

## TERMS AND CONDITIONS

### 1. THE AGREEMENT AND DELIVERY

- 1.1 We are letting and You are taking on hire the Products for use in Your business on the terms set out.
- 1.2 The Agreement starts when We sign it and the Initial Rental and Administration Fee are due at that time. The hiring continues until it is ended by You in accordance with the provisions of this Agreement.
- 1.3 If You wish to end the Agreement at the end of the Minimum Period then You must give Us at least 90 days' written notice to terminate the Agreement, such notice to expire no earlier than the last day of the Minimum Period. On expiry of the Minimum Period, provided that You have not served notice to terminate this Agreement and We have not terminated the hiring of this Products hereunder then the hiring of the Products will automatically continue thereafter until either party gives to the other party 90 days written notice to terminate the hiring of the Products.
- 1.4 All the terms of hire of the Products are in this Agreement and only variations signed by Us both are effective.
- 1.5 You must make all arrangements for the delivery, installation and testing of the Products and their connection to any network. You must inspect the Products on delivery, and inform Us in writing within 5 days if they are defective, incomplete or not as specified otherwise You will have deemed to have fully accepted them.

### 2. PAYMENTS

- 2.1 It is an essential term of this Agreement that You pay to Us all the Rentals and any other sums on the due dates in full and without retention by You. VAT at the applicable prevailing rate must also be paid by You. All amounts payable by You under this Agreement must be made without any deduction, withholding, set-off counterclaim or appropriation.
- 2.2 Unless otherwise agreed before You sign this Agreement all payments by You must be paid by direct debit. If You choose after signing this Agreement to pay by other means, and We agree, then You must pay Our administration fee a minimum of £50 plus VAT for each Rental not yet due and payable.
- 2.3 You agree that the Rentals have been calculated on the assumption that the bases, rates and treatment of corporation tax, capital allowances and VAT allowed or in force at the date of this Agreement will remain unchanged for the period of the Agreement and that We will be entitled to reclaim any VAT in relation to the purchase price of the Products and charge VAT in respect of each Rental. If after the commencement of this Agreement there are any changes in the above assumptions and/or such assumptions proved to be incorrect You shall pay Us, if called upon to do so, by way of increased Rentals or lump sum payable on demand, such sum or sums as are required to place Us in the financial position (as regards this Agreement) which is expected had not such changes occurred and/or such assumptions had not proven to be incorrect. Our certificate of the increased Rentals or lump sum as the case may be shall be final and binding upon You and shall remain payable notwithstanding the termination of this Agreement for whatever reason.
- 2.4 If You do not pay any Rental or other sum due under this Agreement, on the due date for payment, in addition to Our other rights, you will also pay interest from day to day on the unpaid amount at the rate of 6% Bank of England Base Rate of outstanding rentals, whichever is the greater, from time to time, after as well as before any judgement, from the date the payment was due until the day that We receive it.
- 2.5 An annual customer service charge of £30 plus VAT shall be payable in arrears on each anniversary of this Agreement to cover our costs in managing your account including making available (a) information about this Agreement required by you and your agents for the purposes of your business and (b) other administrative services.
- 2.6 Arrears fee is £95+VAT and Declined payment fee is £25+VAT

### 3. USING THE PRODUCTS

- 3.1 If the Products include software You must agree with the software supplier the arrangements for use of it and get the warranties You require from that person. You must ensure the software is suitable for You and that You have all the necessary licences to use and operate it. As You deal directly with the supplier for the supply of the software You agree that it is reasonable for Us to exclude any liability relating to the software. You agree to indemnify Us and keep Us indemnified against any claims, costs, expenses, damages, liabilities and legal fees that We may suffer or incur as a result of any dispute that may arise, in any way whatsoever, in connection with the software or the software licence. You have requested that We accept invoice from the software supplier. The Rentals have been calculated taking into account these amounts, but this does not mean that We licence the Software to You or have any right to do so, Your obligation to pay the Rentals and any other amount due to Us shall be unaffected by any claim You may have in respect of the software and/or software licence.
- 3.2 You are responsible for keeping the Products in good condition at Your own cost. All damage, other than fair wear and tear, must be made good. All replacement and attached parts become part of the Products and Ours. No maintenance or other services are provided by Us under this Agreement.
- 3.3 You must keep the Products safe and use them safely and in accordance with law and the manufacturer's recommendations, and only for purpose for which they are designed, or built, or are suitable. Any modifications required by law or otherwise will be completed at Your expense.
- 3.4 You must keep the Products in Your possession at the Location, except when they are being repaired, but You must not allow any repairer's lien to arise. You must not deal with the Products or transfer or assign them or any part of them. You must not hold Yourself out as the Owner of the Products; nor may You claim capital allowances.
- 3.5 You agree to indemnify Us and keep Us fully indemnified on demand against any loss, damage, proceedings, claims, costs or expenses arising directly or indirectly from Your hiring, possession, operation or use of the Products under this Agreement except for death or personal injury caused by Our negligence. The provisions of this clause shall continue in full force and effect notwithstanding the termination of this Agreement for any reason.

### 4. INSURANCE

- 4.1 You must at all times keep the Products insured under a comprehensive policy without restriction or excess, for an amount equal to its replacement value, and you must note on the policy that the Products are ours. You must show Us evidence of the policy, and if you fail to provide such evidence within 30 days of the date of this agreement, we may at our option arrange for the Products to be protected by our own insurance policy at your expense and collect a charge for this with each Rental. You will have no contractual rights, direct or indirect, under that insurance policy. Or We may at our option, take out insurance for You to insure the Products at Your expense and collect a charge for this with each Rental.

You must also take out insurance to cover You and Us against third party liability claims for an amount which is prudent in the circumstances, or such other amount as We may stipulate.

- 4.2 If equipment is lost or an insurance claim has to be made, you must notify us immediately. If a claim is made we will use the proceeds to replace or repair the Products or as we may otherwise decide is appropriate in the circumstances. Any replacement products provided under your insurance policy or under our insurance policy will belong to us.
- 4.3 If there is a total loss of the Products for insurance purposes, we may terminate the hiring of the Products and you will pay to Us the amounts set out in Clause 8.

### 5. THE SUPPLIER AND MAINTENANCE

- 5.1 If it is indicated that maintenance charges are a part of the Rental then We will act as the Supplier's agent to collect the sums from You. You must enter a maintenance contract for the Products and that contract must continue for the same period as this Agreement. You must perform Your obligations under that contract. The Supplier will be solely responsible for the maintenance and We are not responsible for any failure by the Supplier to provide it.
- 5.2 We may increase the Rentals by the amount of the increase in the maintenance charges due to the Supplier if the maintenance contract allows for that, and We are so requested by the Supplier.
- 5.3 We shall be entitled to apply amounts received from You first towards satisfaction of the Rental, excluding any maintenance charges, not withstanding appropriation to the contrary. If You do not pay the full Rental amount We will stop paying the maintenance charges to the Supplier, who may stop providing maintenance. This does not affect any of Your obligations to Us under this Agreement.
- 5.4 If this Agreement is terminated the Supplier may bring an action to recover any maintenance charges that are due from You under the maintenance contract.
- 5.5 Should the Supplier become unable to provide the maintenance You may by at least one month's written notice tell Us to stop paying the maintenance charges to the Supplier and We will reduce the Rentals by the amount of the maintenance charges from the next Rental payment date. Even if You stop the maintenance charges You may still have obligations to the Supplier.

### 6. YOUR ACKNOWLEDGEMENTS

- 6.1 You and We recognise that there is a risk that any products, in particular computer hardware and software may not perform as expected and may not be satisfactory. We both also acknowledge that salespeople acting on behalf of suppliers may make representations about products including computer hardware and software that are difficult to evaluate until delivery and commissioning. When products are financed the risk of them not working satisfactorily or according to any representations may be assumed by You, by Us, by the supplier, by an intermediary or by an insurer. You and We both appreciate that the allocation of risk is a matter of agreement and You and We have decided that it shall be borne by You, We will, until the hiring of the Products is terminated, at Your expense, give all reasonable assistance to extend to You, so far as We are legally able, the benefit of any manufacturer's guarantees, conditions or warranties in relation to the Products.

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- 6.2 For that reason, You and We agree that there is no term in this Agreement by which We are responsible for the performance of the Products, whether generally or in relation to any particular purpose. We do not know if any representation was made to You about the Products, but if it was, You acknowledge that it was not made on Our behalf and that You have not entered into this Agreement in reliance on it. You and We also agree that We have not assumed any duty of care towards You.
- 6.3 You represent and warrant that You have obtained from the supplier of the Products all representations, warranties and guarantees You require in relation to the Products including but not limited to its quality, fitness for purpose and description.
- 6.4 For the avoidance of doubt, You and We agree that no terms are to be implied into this Agreement.
- 6.5 If the law requires terms to be implied into this Agreement, You and We agree that We are not liable for any breach of them, because if the risk of breach of any such terms had been allocated differently We would have charged a higher rental because We are not in a position to evaluate and therefore insure against the risk of a breach, whilst You are in a better position to do so, because you have chosen the Products and the Supplier.
- 6.6 In no event will Our liability under this Agreement exceed the aggregate of the Rentals paid by You at the time the liability arises.
- 6.7 In no event will We be liable to You in contract, tort or otherwise including any liability for negligence:-
  - a) for any loss of revenue business, Anticipated Savings or profits or any loss of use or value;
  - b) for any indirect or consequential loss; however arising.'Anticipated Savings' means any expenses which You expect to avoid incurring or to incur in a lesser amount than would otherwise have been the case.
- 6.8 The Supplier is not Our agent to make any statements concerning this Agreement or the Products.

## The Direct Debit Guarantee



This Guarantee is offered by all banks and building societies that accept instructions to pay Direct Debits.

- If there are any changes to the amount, date or frequency of your Direct Debit the Owner will notify you within ten working days in advance of your account being debited or as otherwise agreed.
- If you request the Owner to collect a payment, confirmation of the amount and date will be given to you at the time of the request.
- If an error is made in the payment of your Direct Debit by the Owner or your bank or building society, you are entitled to a full and immediate refund of the amount paid from your bank or building society.
  - If you receive a refund you are not entitled to, you must pay it back when the Owner asks you to.
- You can cancel a Direct Debit at any time by simply contacting your bank or building society. Written confirmation may be required. Please also notify us.

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### 7. TERMINATION OF THE AGREEMENT

7.1 We shall be entitled to treat any breach by You of any of Your obligations under this Agreement as a repudiation indicating You no longer intend to abide by this Agreement, and We may subject to giving You any notice required by law, terminate the hiring hereunder. Without prejudice to the generality of the foregoing, We may subject to giving You any notice required by law, terminate the hiring of the Products under this Agreement if:-

- (a) You do not pay any Rentals due under this Agreement on the due date for payment or pay any other sum due under this Agreement within 5 days of it being due and payable;
- (b) You breach any term of this Agreement and if such breach is remediable You fail to remedy it within 7 days of written notice requiring its remedy;
- (c) (if You are a partnership) any of the partners dies, a petition is presented for an administration order to be made in relation to, or a resolution is passed for the winding up or dissolution of the partnership or a petition is presented for a bankruptcy order to be made against one or more of the partners for non-payment of a partnership debt or any one or more of the partners enters into a voluntary arrangement with the creditor of the partnership or the partnership enters into a voluntary arrangement with its creditors;
- (d) (if You are an individual) You die or an application is made for an interim order to be made in relation to You or a petition is presented for a bankruptcy order against You or a trustee in bankruptcy or like officer is appointed over all or any of Your assets or any other steps are taken to appoint an administrator.
- (e) an order is made for the appointment of an administrator over You or documents are filed for the appointment of an administrator over You or a notice of intention is presented to You or any other steps are taken to appoint an administrator;
- (f) You arrange or attempt to arrange a composition or scheme with Your creditors or a meeting of creditors is called;
- (g) You cease or threaten to cease to carry on trading or sell or dispose of a substantial part of Your business or assets without Our consent or there is a material adverse change to Your business;
- (h) there is any change in Your control (whether direct or indirect or Your present holding company ceases to be Your legal and beneficial owner (free from all mortgages, charges, liens or other encumbrances) of the whole or any part of Your issued share capital from time to time;
- (i) You are unable to pay Your debts as they fall due (as defined by section 123 or 268 or the Insolvency Act 1986);
- (j) (in Scotland) You become a bankrupt or have Your estate sequestrated or execute a trust deed, or a judicial factor is appointed to administer Your estate;
- (k) any distress execution or other legal process is levied against any of Your assets or an encumbrancer takes possession of any of Your assets, or any security created by You becomes enforceable and the mortgagee or chargee takes steps to enforce the same;
- (l) any guarantee in respect of Your obligations under this Agreement is not or ceases to be fully valid binding and enforceable;
- (m) any representation made or information provided by You or on Your behalf to Us from time to time in connection with the negotiation or continuation of this Agreement is found to be incorrect as to a particular which, in Our opinion, is material.

### 8. YOUR OBLIGATIONS ON TERMINATION

8.1 On any termination of the hiring by Us You must:

- (a) pay to Us a sum equal to all arrears of Rentals and other payments and interest, and as agreed damages for Our losses due to Your actions a sum equal to all the Rentals (less any maintenance payments) that You would have paid had the Agreement continued for the Minimum Period less a discount from the date of termination to the date the Rental would otherwise have fallen due at a rate of 2% per annum;
- (b) pay all Our costs in repossessing, repairing and selling the Products and administration of the termination; and
- (c) comply with Your obligations in Clause 9 below or compensate Us for Our losses due to Your failure to do so.

### 9. INSPECTION AND RETURN OF PRODUCTS

9.1 You must let Us and Our representatives inspect the Products if We give You notice. Upon the termination or expiry of the hiring of the Products We or Our representatives may, subject to giving You any notice required by law, repossess the Products and, (if required by law) under an order of the Court or with Your consent given at that time, enter the Location and or any premises where the Products are or are believed to be located.

9.2 When this Agreement expires, or is terminated, You must return the Products within two days, and in an Average Saleable Condition to an address nominated by Us within the United Kingdom. If You do not You must continue to pay Rentals at the amounts and intervals specified in the Agreement until the Products are received and accepted by Us. The products must be properly packed for shipment in accordance with the manufacturer's recommendations and specifications, freight pre-paid and insured. If You fail to do so You will be liable for Our costs in recovering the Products and/or restoring them to Average Saleable Condition.

Average Saleable Condition means that all of the Products are immediately available for use by a third party, other than Yourself, in good working order and condition, free from any defects and without the need for repair or refurbishment, fair wear and tear excluded. All products must be free of markings. You will pay Us on demand for any damage, missing or defective parts of accessories.

If all or part of the Products consist of computer equipment You must remove all personal data, sensitive data and passwords.

Upon expiry or termination of this Agreement and/or hiring the Products for any reason then, notwithstanding the other terms of this clause, if You do not or cannot return the Products to Us for any reason within 30 days of such expiry or termination, including but without limitation because they are a total loss, then You will pay us forthwith a sum equal to the amount We anticipated the Products would be worth at the end of the Minimum Period assuming it had been returned in Average Saleable Condition.

### 10. YOUR RIGHTS TO END THE AGREEMENT

10.1 You may apply to Us to terminate the hiring of the Products during the Minimum Period by giving us at least 90 days written notice. If We accept Your request You must pay Us a sum calculated in accordance with Clause 8.

10.2 On termination under Clause 10.1 You must also comply with Your obligations in Clause 9.2.

10.3 You will be entitled to any refund or Rentals or other sums paid in advance if the hiring is terminated for any reason

### 11. The Attached Used of Data Statement

11.1 In considering Your application, We will search Your records at credit reference agencies and fraud prevention agencies. We will add to Your record details of Our search and Your application and these will be seen by other organisations that make searches. We may use a credit scoring system when assessing Your application. We will also add to Your record with the credit reference agencies details of Your payments and any default or failures under this Agreement. It is important that You give accurate information to Us. If You give false or inaccurate information and We suspect or identify fraud, We will record this and may pass this information to fraud prevention agencies and other organisations involved in crime and fraud prevention. These records will be shared with other organisations and used by Us and them to help make decisions about credit and credit related services, on proposals and claims on all types of insurance, and job applications for You and members of Your household to trace and recover debts prevent crime, fraud and manage Your credit related accounts and to check Your identity to prevent money laundering, unless You furnish Us with satisfactory proof of identity. We and other organisations may access and use from other countries the information recorded by fraud prevention agencies. You may, by telephoning Us, obtain details of those credit reference and fraud prevention agencies from whom We obtain and to whom We pass information about You. You have a legal right to these details.

11.2 You agree that We may hold and process by computer or otherwise any information obtained about You in connection with this Agreement and any other applications You have made to, and any Agreement You may have with Us. You acknowledge that we may transfer this information to any country and if no satisfactory data protection laws exist in the country to which we are transferring your personal data, we will put in place equivalent contractual safeguards to those contained in the Data Protection Act.

11.3 You agree that We may use this information and disclose it to the Supplier who introduced You to Us and to other Group Members for the purposes of reviewing the conduct of this Agreement for credit assessment, for marketing, for administering and servicing this agreement and any insurance and to enable Us to carry out statistical analysis. We may also disclose information obtained about You in connection with this Agreement to Our agents, insurers, suppliers, advisers and any person to whom We assign Our rights under this Agreement.

11.4 We may also use information We hold about You to enable Us to send to You marketing material about goods or services offered by Us and by third parties which We believe may be of interest to You and We may sell or provide details of Your name and address to third parties including other Group Members, to enable them to market goods and services to You which We believe may be of interest to You.

11.5 You have the right, upon payment of a fee and applying to Us in writing, to obtain a copy of the information held by Us about You.

### 12. GENERAL

12.1 We may assign this Agreement and/or deal in Our rights and the Products, but this Agreement is personal to You and You may not do that.

12.2 If We give You any relaxing of Our rights this does not affect Our ability to enforce Our rights to their full extent.

12.3 Any notice to be sent to You will be sent to the address shown or Your last know address and deemed delivered two working days after posting.

12.4 If any clause of this Agreement is invalid, that will not affect the validity of others.

12.5 Value Added Tax at the applicable rate will be paid by You on all appropriate payments.

12.6 You will pay Our costs and charges for dealing with unpaid, returned or recalled payments or direct debits, for providing You with other services that You request, and enforcing the terms of this Agreement and repossessing and selling the Products.

12.7 No person has any rights under this Agreement save as may be set out in it and the parties agree that the Contracts (Rights of Third Parties) Act 1999 is excluded.

12.8 In this Agreement references to "You" and "Your" are to the Hirer and if the Hirer is two or more people each of them jointly and separately. The words with capital letters refer to the description in the Agreement. "Group Member" means any company.

12.9 If You are more than one person, Your obligations will be binding on each person separately and all persons jointly.

12.10 English law governs this Agreement.

### 13. COMPLAINTS

Should you have a complaint about this service, you will be advised of contact details once your Finance company has been chosen. Details will be provided within your acceptance letter upon inception of the contract. In some circumstances, if you are an eligible complainant, you may be able to refer the matter to the Financial Ombudsman Service. Details are available from us on request or from [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk) - The Financial Ombudsman Service, Exchange Tower, London E14 9SR.