

These terms and conditions ("Terms and Conditions") shall apply to all Orders regarding the rental of goods, the sale and purchase of goods, and/or the provision of services which are concluded between the Customer (as defined below) and Swire Energy Services Limited, a company incorporated in England and Wales (Company Number 04740627) and having its registered office at Swire House, 59 Buckingham Gate, London, United Kingdom, SW1E 6AJ ("Swire"), or any Affiliate (as defined below) of Swire.

## 1 Interpretation

1.1 In these Terms and Conditions and the Order the following definitions apply:

- 1.1.1 **Affiliate** means any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition, "subsidiary" and "holding company" shall have the meanings assigned to them under Section 1159 and Schedule 6 of the Companies Act 2006, and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee;
- 1.1.2 **Agreement** means the Order and these Terms and Conditions;
- 1.1.3 **CPI** means the consumer price index published by the UK Office for National Statistics;
- 1.1.4 **Claim** means claims, liens, judgments, penalties, awards, remedies, debts, liabilities, damages, demands, costs, losses, expenses (including without limitation legal costs and expenses) or causes of action, of any nature whatsoever;
- 1.1.5 **Consequential Loss** means:
  - 1 (a) indirect or consequential loss under English law; and
  - 2 (b) loss and/or deferral of production, loss of product, loss of use and loss of revenue, profit or anticipated profit (if any) whether direct or indirect, to the extent that these are not included in (a), whether or not foreseeable at the date of the Order;
- 1.1.6 **Contract Price** means the price agreed between the Parties to be payable by the Customer in relation to the performance of an Order by Swire;
- 1.1.7 **Control** means, in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:
  - (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or
  - (b) as a result of any powers conferred by the articles of association or any other document regulating that or any other body corporate, and a **Change of Control** occurs if a person who Controls any body corporate ceases to do so or if another person acquires Control of it;
- 1.1.8 **Co-Venturer** means any co-venturer of the Customer which from time to time has an interest in the licence under which Work is being performed and the successors and assignees of such co-venturer;
- 1.1.9 **Customer** shall have the meaning set out in the Order;
- 1.1.10 **Customer Group** means the Customer, its customers of any tier, its and their Co-Venturers, its and their Affiliates and its and their partners, contractors and subcontractors of any tier (other than any member of Swire Group), and the officers, directors, shareholders, consultants, personnel (including agency personnel) and employees of all of the foregoing;
- 1.1.11 **Designated Location** means the location set out in the Order where the Rental Equipment, Rental Units and/or Sales Goods are to be delivered or where the Services are to be performed;
- 1.1.12 **Installed Equipment** means any equipment and/or systems included or installed in any Rental Unit (including all cabling, connections and hardware for the same) excluding those items listed in the definition of Rental Units below;
- 1.1.13 **Intellectual Property Rights** means any patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, confidential information (including know-how and trade secrets) in any form, and any 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, these 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;
- 1.1.14 **Order** means an order in any form which is concluded between Swire and the Customer;
- 1.1.15 **Other Contractor** shall mean any other contractor engaged by the Customer to perform work at the Designated Location or another site and which has entered into contract(s) with the Customer;
- 1.1.16 **Other Contractor Group** shall mean the Other Contractor, its subcontractors, its and their Affiliates, its and their respective directors, officers and personnel (including agency personnel) but shall not include any member of the Customer Group or Swire Group;
- 1.1.17 **Party** means each of the Customer and Swire and **Parties** means the Customer and Swire collectively;
- 1.1.18 **Period of Hire** shall mean, in respect of the Rental Equipment and/or each Rental Unit, the period beginning on the day on which Swire makes that Rental Equipment and/or Rental Unit available for collection at Swire's Depot by the Customer and ending on the day on which such Rental Equipment and/or Rental Unit is returned by the Customer to Swire's Depot;
- 1.1.19 **Rental Charges** shall mean the periodic rental charge for the Rental Equipment and/or per Rental Unit set out in the Order, as varied from time to time pursuant to condition 15.5, condition 15.6 or condition 9.3;
- 1.1.20 **Rental Conditions** means, in respect of the Rental Equipment and/or any Rental Unit, that (1) Swire is permitted to make that Rental Equipment and/or Rental Unit available by way of hire to the Customer in accordance with this Agreement, and (2) that, provided the Customer complies in full with its obligations under this Agreement, Swire shall permit the Customer to enjoy quiet possession of the Rental Equipment and/or Rental Unit for the relevant Period of Hire, subject to this Agreement;
- 1.1.21 **Rental Equipment** shall mean any equipment which is leased by Swire to the Customer as further described in the Order and which is not a Rental Unit;
- 1.1.22 **Rental Units** shall mean the leased units described in the Order and shall include any shelves, slings, straps, chains, tarpaulins or other covers including nets, shackles and lashings and any Installed Equipment but shall not include any Rental Equipment, and the term **Rental Unit** shall be construed accordingly;
- 1.1.23 **Sale Goods** means any goods and / or equipment to be sold to the Customer in accordance with the terms of the Order;
- 1.1.24 **Services** means services to be performed by Swire Group in accordance with the requirements of the Order;
- 1.1.25 **Special Conditions** means the special conditions that the Parties have mutually agreed in writing in relation to any Order;
- 1.1.26 **Subcontractors** means all subcontractors of any tier who are performing work in connection with the Order, their respective Affiliates and their respective directors, officers and employees (including any agency personnel);
- 1.1.27 **Swire Depot** shall have the meaning set out in the Order;
- 1.1.28 **Swire Group** means Swire, the Subcontractors, its and their Affiliates, and its and their respective officers and personnel (including agency personnel), but shall not include any member of the Customer Group;

- 1.1.29 **Technical Information** means all such information provided by or caused to be provided by the Customer in connection with the Order;
- 1.1.30 **Term** shall have the meaning set out in the Order;
- 1.1.31 **Third Party** means any individual, entity or party which is not a member of the Customer Group or the Swire Group;
- 1.1.32 **User Region** shall have the meaning set out in the Order; and
- 1.1.33 **Work** means collectively the supply by Swire of the Sale Goods, the Rental Equipment and/or the performance of the Services as specified in the Order.
- 1.2 Headings used in these Terms and Conditions shall not affect the interpretation of this Agreement. Any reference to a condition when used in these Terms and Conditions is to a condition of these Terms and Conditions.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.4 Any obligation in this Agreement on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce to that thing being done.
- 1.5 Words in the singular include the plural and in the plural include the singular. A reference to one gender includes a reference to the other gender.
- 1.6 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7 Any reference to an English statutory provision or English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly corresponds to the English statutory provision or English legal term in that jurisdiction.
- 2 Application of conditions**
- 2.1 The Special Conditions set out within any Order shall take precedence over these Terms and Conditions.
- 2.2 These Terms and Conditions shall apply to and be incorporated into this Agreement and prevail over any inconsistent terms or conditions contained, or referred to, in any document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.
- 2.3 Any acceptance or acknowledgement of an Order by the Customer, even if containing or referencing terms inconsistent with or in addition to the terms of the Order, shall be deemed as a full acceptance by the Customer of the Order, and the inconsistent or additional terms shall be deemed ineffective unless they were specifically and expressly accepted by Swire in writing.
- 2.4 This Agreement shall become effective and the Parties shall be bound by its terms once both Parties have signed the Order. In the event that the Customer does not sign the Order but collects or accepts delivery of the Rental Equipment, and/or Rental Units and/or Sale Goods or allows the Services to proceed, the Customer shall be deemed to have accepted these Terms and Conditions and agreed to be bound by them.
- 2.5 The terms incorporated in any Order may not be amended unless expressly agreed by the Parties in writing.
- 3 Commencement and duration**
- 3.1 Swire shall:
- 3.1.1 supply the Sale Goods;
- 3.1.2 supply the Services; and/or
- 3.1.3 make available the Rental Equipment and/or Rental Units by way of hire, to the Customer during the Term, subject to the Terms and Conditions set out herein, unless and until this Agreement is terminated earlier in accordance with condition 22.
- 3.2 Subject to condition 3.1, if the Order provides that the Term is on a periodic hire until the Rental Equipment and/or Rental Units are returned or if the Customer does not return any Rental Equipment and/or Rental Unit at the end of the Term, the Customer will hire such Rental Equipment and/or Rental Units on a periodic basis, provided that to the extent any Rental Equipment and/or Rental Units are not returned to Swire at the end of a fixed term or after this Agreement has been terminated Swire shall have the right to increase the Rental Charges for such unreturned Rental Equipment and/or Rental Units to its standard periodic rental charge.
- 4 Description and certification**
- 4.1 All specifications, descriptions or illustrations issued by Swire are issued for the sole purpose of giving an approximate idea of the Works described. They shall not form part of this Agreement.
- 4.2 The Rental Units are designed, manufactured and inspected in all material respects in accordance with the DNV2.7-1, 3 and EN12079 standards unless otherwise specified by Swire.
- 5 Services**
- 5.1 Services will be performed in accordance with the agreed scope of work as set out in the Order.
- 5.2 The Customer agrees to provide Swire with reasonable access to the Designated Location in order to allow Swire to perform the Services. If Swire does not grant Swire the access it requires to the Designated Location and Swire cannot perform the Services, Swire shall have no liability in respect of any failure by Swire to perform the Services and the Customer shall not be entitled to reject the Services or to claim any reduction in the Contract Price or any other remedy in respect of Swire's failure to perform the Services.
- 6 Delivery**
- 6.1 Sales Goods**
- 6.1.1 Delivery of any Sale Goods to be supplied under any Order shall be made to the Designated Location specified in the Order (or any such other alternative location which is agreed between the Parties) by the relevant date(s) specified in the Order.
- 6.2 Rental Equipment and Rental Units**
- 6.2.1 Unless otherwise agreed in writing by Swire, delivery of Rental Equipment and/or each Rental Unit shall take place at Swire's Depot when the Rental Equipment and/or relevant Rental Unit is lifted by Swire onto the vehicle sent by or on behalf of the Customer to collect such Rental Equipment and/or Rental Unit.
- 6.2.2 The Customer shall procure that Rental Equipment and/or Rental Units are collected by it or its agent within three days of Swire giving notice that such Rental Equipment and/or Rental Units are ready for collection.
- 6.2.3 Time for making the Rental Equipment and/or Rental Units available for collection shall not be of the essence.
- 7 Acceptance**
- 7.1 Sales Goods**
- 7.1.1 The Customer shall be deemed to have accepted the Sales Goods if it has not notified Swire that it rejects the Sales Goods within seven (7) days of delivery of the Sales Goods to the Designated Location.
- 7.1.2 If the Customer requires the Sales Goods to be manufactured to a certain specification, that specification will be set out in full in the Order (the "Specification") and the Customer, on its acceptance or acknowledgement of the Order, will be deemed to have approved the Specification. The Customer warrants that the Specification is correct, accurate and meets all of the requirements of the Customer. Subject to condition 7.1.3,

the Customer shall not be entitled to request any variation to the Specification and may not reject the Sales Goods on the basis that the Specification is incorrect or inaccurate or does not meet the requirements of the Customer.

- 7.1.3 The Customer may request a variation to the Specification at any time by submitting a variation order request to Swire. Swire shall, in its sole discretion, consider whether to accept or reject the variation order request. If Swire rejects the variation order request, Swire shall continue to manufacture the Sales Goods to the Specification in accordance with condition 7.1.2 and Customer shall not be entitled to reject the Sales Goods on the basis that the Specification is incorrect or inaccurate or does not meet the requirements of the Customer. If Swire accepts the variation order request, Swire shall consider whether it is appropriate to make an adjustment to the Contract Price as a result of the variation to the Specification. If Swire considers an adjustment to the Contract Price is appropriate, the adjustment shall be valued at the appropriate rates and prices included in the Order or, in the absence of any appropriate rates and prices, a fair valuation shall be made by Swire.

## 7.2 **Rental Equipment and Rental Units**

- 7.2.1 The Customer shall be deemed to have accepted the Rental Equipment and/or Rental Units in good working order and condition and free from any deficiency, defect or damage, with effect from delivery of the Rental Equipment and/or Rental Units in accordance with condition 6.2. It is the Customer's responsibility to inspect any Rental Equipment and/or Rental Unit before accepting it and the Customer must notify Swire immediately if it does not believe any Rental Equipment and/or Rental Unit to be as described in this condition.

- 7.2.2 Following acceptance of the Rental Equipment and/or a Rental Unit under condition 7.2.1 the Customer shall have no right to reject such Rental Equipment and/or Rental Unit.

## 7.3 **Services**

- 7.3.1 The Customer shall be deemed to have accepted the Services if it has not notified Swire, within seven (7) days of the date of completion of the Services, that the Services have not been performed in accordance with the terms of this Agreement.

## 7.4 **General**

- 7.4.1 Swire will not be liable for any loss or damage resulting from the failure of the Customer to use the Sale Goods and/or the Rental Equipment and/or the Rental Units in accordance with any specific operating conditions set out in the Order or otherwise provided to the Customer by Swire.

## 8 **Risk and title**

### 8.1 **Sales Goods**

- 8.1.1 Title and risk in any Sale Goods to be supplied hereunder to the Customer shall pass to the Customer upon delivery of the Sale Goods to the Designated Location in accordance with the relevant date of delivery in the Order.

### 8.2 **Rental Equipment and Rental Units**

- 8.2.1 The Rental Equipment and/or each Rental Unit shall be at the risk of the Customer with effect from delivery until the time that such Rental Equipment and/or Rental Unit is returned to Swire's Depot or such other place as required under condition 13.1.

- 8.2.2 If the Customer requests that Swire provides transport for the Rental Equipment and/or any Rental Units to or from Swire's Depot it shall do so as the Customer's agent on such terms and conditions as Swire and the Customer may agree and, subject thereto, such transportation shall be at the Customer's sole cost and expense and risk in such Rental Equipment and/or Rental Units shall be with the Customer who shall indemnify Swire against all claims in respect of any loss or damage to such Rental Equipment and/or Rental Units whilst in transit howsoever arising save as a result of Swire's negligence.

- 8.2.3 Swire will at all times retain full title to Rental Equipment and/or each of the Rental Units, notwithstanding that the Rental Equipment and/or any such Rental Unit may be:

- (a) leased to and in the possession of the Customer; and/or
- (b) attached to any land or property belonging to the Customer; and/or
- (c) being used by the Customer in connection with any business carried on by the Customer or any third party from time to time.

- 8.2.4 The Customer shall take all reasonable steps to ensure that the title of Swire to the Rental Equipment and/or any of the Rental Units are brought to the notice of all sub-contractors and other persons with access to the Rental Equipment and/or Rental Units and shall, at Swire's request, store the Rental Equipment and/or Rental Units separately from other units in the Customer's possession.

- 8.2.5 The Customer shall save, indemnify, defend and hold harmless Swire Group from all Claims relating to the ownership of Rental Equipment and/or the Rental Units which arise during or relate in any way to the Period of Hire.

### 8.3 **Services**

- 8.3.1 Title and risk in any equipment, goods or property owned, hired, leased or otherwise provided by the Customer which is delivered by the Customer to Swire at the Designated Location in order to allow Swire to complete the Services shall remain with the Customer at all times.

## 9 **Use of Rental Equipment and/or Rental Units**

- 9.1 The Customer warrants and undertakes that the Rental Equipment and/or Rental Units are intended to be and shall only be used and located exclusively in the User Region for the entire duration of the Period of Hire.

- 9.2 The Customer may not remove the Rental Equipment and/or any Rental Units from the User Region at any time without Swire's prior written consent. Failure to comply with this obligation shall constitute a material breach by the Customer of this Agreement.

- 9.3 Without prejudice to condition 9.2, in the event that the Rental Equipment and/or a Rental Unit is taken outside of the User Region in breach of condition 9.2 above the Rental Charges for the Rental Equipment and/or such Rental Unit, for the period for which such Rental Equipment and/or Rental Unit is outside the User Region, shall be the higher of (1) the periodic rental charge payable for such Rental Equipment and/or Rental Unit in the User Region under this Agreement and (2) Swire's prevailing rental charges applicable in the region to which such Rental Equipment and/or Rental Unit is taken, plus 50% in either case.

- 9.4 The Customer warrants that it will not cause the Rental Equipment and/or any Rental Unit including any ancillary equipment (including Installed Equipment) to be loaded beyond the maximum gross weight permitted by Swire in respect of the Rental Equipment and/or such Rental Unit or equipment, as notified by Swire to the Customer from time to time. The Customer acknowledges that any overloading of the Rental Equipment and/or any Rental Unit beyond the maximum permitted gross weight shall be deemed to be a material breach by the Customer of this Agreement.

- 9.5 The Customer warrants that, unless Swire otherwise agrees in writing, it will not allow the Rental Equipment and/or any Rental Unit to be used for the transport or storage of unprotected corrosive substances or materials which may cause oxidation or undue abrasion of the interior of the Rental Equipment and/or such Rental Unit or any other damage to such Rental Equipment and/or Rental Unit.

- 9.6 The Customer shall exercise all reasonable care when using the Rental Equipment and/or Rental Units and, in particular, shall ensure that:

- 9.6.1 all cargos are properly and adequately secured within the Rental Units; and
- 9.6.2 adequate safety precautions are taken and maintained in respect of the use of the Rental Equipment and/or each Rental Unit, including (but not limited to) where personnel enter into or otherwise use any such Rental Equipment and/or Rental Unit;
- 9.6.3 the Rental Equipment and/or Rental Units are stored in a safe and hazard free environment; and
- 9.6.4 it complies with Swire's operating instructions regarding any Rental Equipment and/or Rental Units.

- 9.7 The Customer warrants that it will not permit its employees or agents to remove, cover or deface any identifying marks, numbers or signs placed on the Rental Equipment and/or any of the Rental Units by Swire.
- 9.8 The Customer shall not:
- 9.8.1 make any modifications or additions to the Rental Equipment and/or any Rental Unit or any Installed Equipment, whether of a temporary or permanent nature; or
- 9.8.2 operate the Rental Equipment and/or any Rental Unit with any part or parts not properly fitted.
- 9.9 The Customer shall pay for all taxes, charges and statutory permits or approvals arising out of or incidental to its use or possession of the Rental Equipment and/or Rental Units until returned to Swire's Depot, including any expenses of inspection, testing and certification of the Rental Equipment and/or Rental Units by any competent authority.
- 9.10 The Customer warrants and undertakes that its possession and use of the Rental Equipment and/or each Rental Unit, and the performance by it of its obligations under this Agreement, will at all times comply with all applicable legislation, regulations, guidance or requirements issued by any governmental or regulatory body from time to time, including in relation to health and safety, safe operation and handling, and control of hazardous substances. The Customer acknowledges that any failure by it to comply with this obligation shall constitute a material breach by the Customer of this Agreement.
- 9.11 The Customer warrants and undertakes that it will take all necessary precautions to prevent any damaged Rental Equipment and/or Rental Units from being put into service and Swire will, under no circumstances, have any liability or responsibility for the Rental Equipment and/or Rental Units which are used by the Customer where the Customer knew or should have known that such Rental Equipment and/or Rental Units were damaged.
- 9.12 Any breach by the Customer of any of the provisions conditions or obligations set out in this condition 9 shall cause the Customer to:
- 9.12.1 be liable for the full cost of repair restoration or maintenance of the Rental Equipment and/or Rental Units in order to return the Rental Equipment and/or Rental Unit to the same condition it was in at the time that it was delivered to the Customer plus an additional 10% of such costs by way of service charge; and
- 9.12.2 be liable to indemnify Swire under condition 19 (without prejudice to the generality of that condition).
- 10 Repairs to Rental Equipment and/or Rental Units**
- 10.1 Swire warrants that it shall perform the Work in accordance with the provisions of the Order, and all Work shall be free from defects.
- 10.2 The Rental Equipment and all Rental Units shall be supplied to the Customer on the basis that the Customer shall be liable for all damage and loss occurring to, and as a result of the use of, the Rental Equipment and/or the Rental Units whilst in the Customer's possession or control or whilst the Rental Equipment and/or the Rental Units are at the Customer's risk pursuant to conditions 8 or 22.3.2 and, during such period, the Customer shall be liable at its own expense to maintain all Rental Equipment and/or Rental Units in good condition and repair (fair wear and tear excepted) and, subject to conditions 10.4 and 10.5 below, make all necessary replacements of components and parts including moving and wearing parts, all to a good and workmanlike standard and using the procedures, equipment and spare parts specified by Swire.
- 10.3 At the end of the Period of Hire, the Customer will return the Rental Equipment and/or all Rental Units to Swire and Swire will examine the Rental Equipment and/or the Rental Units and if appropriate raise a charge to the Customer to cover the repair and maintenance of the Rental Equipment and/or the Rental Units to Swire's fleet standard. Any such necessary repairs or maintenance, other than to cover fair wear and tear, shall be charged at Swire's standard rates and the Customer shall be liable to pay the full charge in respect of such repairs and maintenance. The Customer shall always have the option of withdrawing the Rental Equipment and/or any Rental Unit and carrying out the necessary work to make good the Rental Equipment and/or the Rental Unit at its own expense but in such case the Period of Hire in respect of such Rental Equipment and/or Rental Unit will continue until the Rental Equipment and/or Rental Unit is returned to Swire in accordance with condition 13.
- 10.4 The Customer shall notify Swire promptly after becoming aware of any damage to, or loss or failure of, the Rental Equipment and/or any Rental Unit (or part thereof) during the Period of Hire, howsoever arising, and the Customer shall comply with Swire's instructions in relation to the repair or remedy of any such damage, loss or failure. In such circumstances:
- 10.4.1 should Swire require the Customer to make repairs, then the Customer shall make such repairs in accordance with Swire's instructions, using such materials and procedures as Swire may specify and/or provide, and providing Swire with all details, information and evidence of such repairs (and the standard of such repairs) as Swire may require; or
- 10.4.2 should Swire notify the Customer that it requires such repairs to be made by Swire (and/or its nominated third party), then the Customer shall permit Swire and/or such third party to access and repair the relevant Rental Unit(s) at such time and place and in such manner as Swire may specify.
- 10.5 All repairs (including but not limited to parts, expenses and labour) referred to in this condition 10 shall be at the Customer's sole cost and expense unless both:
- 10.5.1 the Rental Equipment and/or the relevant Rental Unit has been used by the Customer fully in accordance with this Agreement; and
- 10.5.2 the relevant loss or damage is caused solely and directly by any fault subsisting or arising in the Rental Equipment and/or the relevant Rental Unit that was caused by Swire's breach of this Agreement and where such fault was not apparent on the inspection referred to in condition 7.1.1 above, in which case Swire shall be responsible for the cost of any replacement part(s) required and the reasonable cost of labour to install such part(s), and the Customer shall be responsible for expenses incurred by Swire in repairing or procuring the repair of the Rental Equipment and/or relevant Rental Unit(s), including the costs of delivery travel, travel time, accommodation and subsistence.
- 11 Loss or damage of Rental Equipment and/or Rental Units**
- 11.1 In the event that the Rental Equipment and/or a Rental Unit is lost, partially or totally destroyed or damaged the Customer shall immediately notify such loss, destruction or damage to Swire together with such documentary evidence as Swire may require in relation to the circumstances of such loss, destruction or damage.
- 11.2 Swire shall be entitled in the case of partial destruction or damage to examine (at the Customer's cost) the Rental Equipment and/or the relevant Rental Unit, and Swire shall be entitled at its option to the following remedies:
- 11.2.1 Swire may declare the Rental Equipment and/or the Rental Unit to be a constructive total loss (which expression shall mean incapable of economic repair, as to which Swire shall be the sole judge) in which event the Customer shall meet all costs incidental to the recovery, inspection and disposal of the Rental Equipment and/or the Rental Unit and will forthwith pay to Swire the current replacement cost of the Rental Equipment and/or the Rental Unit and Swire may either:
- i treat the Period of Hire of the Rental Equipment and/or such Rental Unit as having come to an end; or
- ii replace the Rental Equipment and/or the Rental Unit with different Rental Equipment or another Rental Unit within such reasonable time as this can be accomplished in which event the Period of Hire of such Rental Equipment and/or Rental Unit will continue; or
- 11.2.2 Swire may carry out such repairs as are necessary to put the Rental Equipment and/or the Rental Unit into the same good order and repair as such Rental Equipment and/or Rental Unit was at the beginning of the Period of Hire, the cost of such repairs to be borne by the Customer. The



Rental Equipment and/or relevant Rental Unit will remain on hire whilst such repairs are carried out and the Customer will meet the expense of transportation to and from Swire's Depot or other place of repair and all other incidental expenses.

11.3 In the event that the Rental Equipment and/or a Rental Unit is reported as lost in accordance with condition 11.1, the Customer shall pay to Swire the full amount of the replacement cost of the Rental Equipment and/or the Rental Unit.

11.4 In the event that the Rental Equipment and/or a Rental Unit is reported as lost in accordance with condition 11.1 and the Customer has paid to Swire the full amount of the replacement cost in accordance with condition 11.3, and the Rental Equipment and/or Rental Unit is found within 1 calendar month of it being reported as lost:

11.4.1 Swire shall refund or credit to the account of the Customer the amount paid by the Customer in respect of the full replacement cost of the Rental Equipment and/or Rental Unit;

11.4.2 the Period of Hire in respect of such Rental Equipment and/or Rental Unit shall be treated as having continued during the period starting from when the Rental Equipment and/or Rental Unit was reported as having been lost;

11.4.3 Swire shall invoice the Customer and the Customer shall pay the Rental Charges for the period during which the Rental Equipment and/or Rental Unit was reported as lost.

## 12 **Inspection and testing of Rental Equipment and Rental Units**

12.1 Swire reserves the right at its sole discretion to inspect and test all Rental Equipment and/or Rental Units at regular intervals determined by it, and the Customer shall make all Rental Equipment and/or Rental Units available for such periodic inspection and testing by Swire, subject to the Customer receiving reasonable notice from Swire.

12.2 Without prejudice to condition 12.1 the Customer must ensure at its cost that all ongoing inspection, testing and certification is carried out in compliance with the design standard of such Rental Equipment and/or Rental Unit and in accordance with all applicable legal requirements in any jurisdiction in which such Rental Equipment and/or Rental Unit is situated or is to be taken. Where Swire has notified the Customer that it wishes to inspect or test any Rental Equipment and/or Rental Unit(s), either:

12.2.1 the Customer shall deliver such Rental Equipment and/or Rental Unit(s) back to Swire (or its nominee) in the manner required by Swire, for testing by Swire (at Swire's cost); or

12.2.2 if the Parties so agree, Swire will test the Rental Equipment and/or such Rental Unit(s) at the place(s) where they are kept by the Customer, at the Customer's cost.

12.3 In the event that the Customer fails to comply with its obligations under condition 12 in respect of any Rental Equipment and/or Rental Unit:

12.3.1 subject to condition 21.3, the Customer acknowledges that it shall have no claim whatsoever against Swire in respect of Rental Equipment and/or such Rental Unit whether arising under this Agreement or otherwise, and

12.3.2 Swire reserves the right to undertake the inspection, testing and certification of Rental Equipment and/or such Rental Unit and the cost of such inspection, testing and certification will be recharged by Swire to the Customer, and such charges shall be payable by the Customer in addition to the Rental Charges.

12.4 The Customer hereby grants Swire an irrevocable licence to enter upon any premises of the Customer during normal business hours on reasonable notice to assess and enforce compliance by the Customer with the terms of this Agreement, including (but not limited to) to retrieve Rental Equipment and/or any Rental Unit(s) in respect of which the Period of Hire has ended, to inspect and/or repair Rental Equipment and/or any Rental Unit(s), to move Rental Equipment and/or any Rental Unit(s) to the User Region if they have been removed from it from any other region to which it/they have been moved in breach of this Agreement, or for any other reason required to ensure compliance with the terms of this Agreement.

## 13 **Return of Rental Equipment and/or Rental Units**

13.1 At the end of the Period of Hire, unless the Parties otherwise agree, the Customer shall return the Rental Equipment and/or each of the Rental Units to Swire's Depot or to such other place as shall be notified by Swire to the Customer (provided that the cost to the Customer of delivering the Rental Equipment and/or each Rental Unit to such other location shall not exceed the cost that the Customer would have incurred in delivering the Rental Equipment and/or such Rental Unit to Swire's Depot).

13.2 The Customer shall ensure that Rental Equipment and/or all Rental Units shall be returned to Swire in a thoroughly clean condition both externally and internally and the Rental Equipment and/or Rental Units shall be free of all foreign matter, residue of previous cargos and the like or any form of contamination and shall only be deemed to be returned to Swire for the purposes of this Agreement when Swire accepts return of the Rental Equipment and/or relevant Rental Unit. If the Rental Equipment and/or any Rental Unit is not returned in the aforesaid condition Swire shall, at the Customer's expense, redeliver such Rental Equipment and/or Rental Unit to the Customer and the Period of Hire in respect of such Rental Equipment and/or Rental Unit shall continue until the Rental Equipment and/or Rental Unit is returned to Swire in accordance with this condition 13.

## 14 **Defects Correction**

### 14.1 **Sales Goods**

14.1.1 If the Customer notifies Swire of any defects in the Sale Goods within twelve (12) months from the date upon which the Sale Goods were delivered to the Customer, Swire shall carry out all works necessary to correct any defects in the Sale Goods.

### 14.2 **Services**

14.2.1 If the Customer notifies Swire of any defects in the Services, or any defects correction work carried out by Swire, which arises within the warranty period as set out in Order, Swire shall carry out all works necessary to correct such defects in the Services.

### 14.3 **General**

14.3.1 Swire's warranty in this condition 14 shall exclude liability for defects arising from improper use, use of unapproved spares, unauthorised modification or alteration of the Works, normal wear and tear and/or the failure of the Customer to provide proper storage, installation, operation and/or maintenance in accordance with the instructions provided by Swire or otherwise good industry practice.

## 15 **Charges and payment**

15.1 The Order will (if applicable) specify key milestones in respect of the Work upon achievement of which Swire shall be entitled to submit an invoice to the Customer for all Work completed up to the date of achievement of that milestone.

15.2 The Customer shall be liable for payment for Work performed by or on behalf of Swire at the rate specified in the Order.

15.3 The Rental Charges during the Period of Hire for the Rental Equipment and/or each Rental Unit shall accrue and be calculated on a periodic basis, being the period referred to in the Order. Should the Customer return to, or make available for collection by, Swire the Rental Equipment and/or any Rental Unit prior to the end of the Period of Hire for that Rental Equipment and/or Rental Unit (as such Period of Hire may have been extended pursuant to condition 3.2), Swire shall remain liable to pay the Rental Charges for the entire Period of Hire.

15.4 Subject to condition 15.8 below, Swire shall invoice the Customer for the Work together with any value added tax due thereon monthly in arrears. The Customer shall pay the invoice received from Swire (without deduction or set-off) within 30 days of receipt of the invoice.

- 15.5 Swire may review and increase Rental Charges from time to time. Swire will give the Customer written notice of any such increase 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it may, in the period before the increase takes effect, terminate this Agreement by giving not less than seven business days' written notice to Swire.
- 15.6 Without prejudice to Swire's right pursuant to condition 15.5, on 1 January of each year Rental Charges: (i) in relation to Work carried out in the United Kingdom, shall automatically be increased by the CPI and (ii) in relation to Work carried out in any other country, shall be increased by the higher of the CPI and such other broadly equivalent index in relation to the country or region in which the Work is being carried out, as may be notified by Swire to the Customer at the time. For the avoidance of doubt, the effect of this condition 15.6 shall in no circumstances create a reduction in the Rental Charges. If the CPI (or relevant foreign index) would imply a negative price change, then this condition shall have no effect in relation thereto. Swire shall not be required to give the Customer written notice of any increase pursuant to this condition 15.6 and the Customer shall not be entitled to terminate this Agreement as a result of the increase.
- 15.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Swire on the due date any sum owing pursuant to the terms of this Agreement, Swire may charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Royal Bank of Scotland plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment, and the Customer shall pay the interest immediately on demand. This condition 15.6 is without prejudice to any right to claim for interest under the law.
- 15.8 Time for payment shall be of the essence.
- 15.9 Swire shall invoice the Customer for the supply of Sales Goods together with any value added tax due thereon in accordance with the schedule for staged payments set out in the Order and the Customer shall pay each invoice received from Swire (without deduction or set-off) within 30 days of receipt of each invoice. Standard staged payments being 30% on placement of order, 50% Ex Works and 20% on collection/delivery.
- 16 Insurance**
- 16.1 The Customer shall, at all times, whilst the Rental Equipment and/or any Rental Unit is at its risk as described in condition 8.2 or 22.3.2, maintain insurance cover to the full replacement value of the Rental Equipment and/or such Rental Unit.
- 16.2 In addition to the foregoing the Customer shall, during each Period of Hire and for a period of one year thereafter, take out and maintain, with a reputable insurer, the following policies:
- 16.2.1 employers' liability insurance, with a minimum limit of £10 million per claim
- 16.2.2 public liability insurance, with a minimum limit of £5 million per claim; and
- 16.2.3 such other insurances as Swire may (acting reasonably) specify from time to time.
- 16.3 The Customer shall, if so requested by Swire, provide evidence of all insurances required by this condition, and shall provide certificates with respect to the policies carried, evidence that the most recent premium has been paid, and any other relevant information Swire may reasonably require from time to time to satisfy itself that such obligations have been complied with by the Customer.
- 16.4 Swire may, if agreed in writing, be prepared to maintain insurance cover in respect of the Rental Equipment and/or any Rental Unit whilst the Rental Equipment and/or a Rental Unit is at the risk of the Customer, provided that the cost of such insurance shall be recharged by Swire to the Customer and such charges shall be payable by the Customer in addition to the Rental Charges.
- 17 Intellectual property**
- 17.1 The Customer acknowledges that all Intellectual Property Rights used by or in connection with or subsisting in the Rental Equipment and/or Rental Units are and shall remain the sole property of Swire or (as the case may be) any third party rights owner and the Customer shall acquire no right, title or interest in any such Intellectual Property Rights pursuant to this Agreement.
- 17.2 To the extent any Intellectual Property Rights are created or otherwise arise in connection with:
- (a) developments by Swire Group which are based wholly on data, equipment, processes, substances and the like in the possession of Swire Group at the date of the Order or otherwise wholly produced outside of the Order; or
- (b) enhancements of or in the existing Intellectual Property Rights of Swire Group, such rights shall vest in Swire or another company within Swire Group as the case may be.
- 17.3 Subject to condition 17.1, to the extent any Intellectual Property Rights are created or otherwise arise in connection with:
- (a) developments by the Customer Group which are based wholly on data, equipment, processes, substances and the like in the possession of the Customer Group at the date of the Order or otherwise produced outside of the Order; or
- (b) enhancements of or in the existing Intellectual Property Rights of the Customer Group, such rights shall vest in the Customer or its Affiliates as the case may be.
- 17.4 Except as provided in conditions 17.1 to 17.3, any Intellectual Property Rights arising or otherwise created in connection with the provision of the Work shall vest in Swire.
- 17.5 Swire shall save, indemnify, defend and hold harmless the Customer Group from all Claims of every kind and nature for, or arising out of, any alleged infringement of any Intellectual Property Right of any nature, arising out of or in connection with the performance of the obligations of Swire under the Order, except where such infringement necessarily arises from the Technical Information and/or the Customer's instructions. The above indemnity is conditional on the Customer not making any admissions or statement which might have a negative effect in relation to any infringement Claims, on the Customer giving Swire the earliest possible notice in writing of any Claim being made or action threatened against the Customer and on the Customer permitting Swire at his own expense to conduct any litigation that may ensue and all negotiations for the settlement of the Claim.
- 17.6 The Customer shall save, indemnify, defend and hold harmless Swire Group from all Claims of every kind and nature for, or arising out of, any alleged infringement of any Intellectual Property Right of any nature arising out of or in connection with the performance of the obligations of the Customer under the Order or the use by Swire Group of Technical Information or materials or equipment supplied by the Customer.
- 18 Confidentiality**
- 18.1 The Parties agree to hold strictly confidential and not (without the prior written consent of and in accordance with any conditions imposed by the disclosing Party) to disclose to any third party any information provided by the disclosing Party for a period of five (5) years following completion of the performance of the Order.
- 18.2 Condition 18.1 shall not apply where the information was in the public domain before it was furnished to the receiving Party or, after it was forwarded to the receiving Party, entered into the public domain otherwise than as a result of (i) a breach by the receiving Party of this condition 18 or (ii) a breach of a confidentiality obligation by the disclosure where the breach was known to the receiving Party; or where disclosure is necessary in order to comply with an order of a court of competent jurisdiction, applicable legislation or regulatory requirements.
- 19 Indemnity**
- 19.1 Subject to condition 20, Swire shall be responsible for and shall save, indemnify, defend and hold harmless the Customer Group from and against all Claims in respect of:

- 19.1.1 loss of or damage to the property of Swire Group whether owned, hired, leased or otherwise provided by Swire Group (other than any Rental Equipment and/or Rental Units on hire) arising from, relating to or in connection with the performance or non-performance of any Order;
- 19.1.2 personal injury including death or disease to any person employed by Swire Group arising from, relating to or in connection with the performance or non-performance of any Order; and
- 19.1.3 subject to condition 19.4, personal injury including death or disease sustained by any Third Party or loss of or damage to the property of any Third Party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of Swire Group.
- 19.2 Subject to condition 20, the Customer shall be responsible for and shall save, indemnify, defend and hold harmless Swire Group from and against all Claims in respect of:
  - 19.2.1 loss of or damage to property of the Customer Group and Rental Equipment and/or any Rental Units on hire to the Customer arising from, related to or in connection with the performance or non-performance of the Order;
  - 19.2.2 personal injury including death or disease to any person employed by the Customer Group arising from, relating to or in connection with the performance or non-performance of the Order; and
  - 19.2.3 subject to condition 19.4, personal injury including death or disease sustained by any Third Party or loss of or damage to the property of any Third Party to the extent that any such injury is caused by the negligence or breach of duty of the Customer Group.
- 19.3 Commencing from the effective date on which any Other Contractor became bound by a clause effectively containing the same undertaking as this condition 19.3, in any contract which any Other Contractor has entered into with the Customer, and for the duration that the Other Contractor remains bound by the provisions of such clause, Swire shall save, indemnify, defend and hold harmless the Other Contractor Group from and against all Claims in respect of:
  - i loss of or damage to property of Swire Group whether owned, hired, leased or otherwise provided by Swire Group arising from or relating to the performance of the Order; and
  - ii personal injury including death or disease to any person employed by Swire Group arising from or related to the performance of the Order; and
  - iii any Consequential Loss sustained by Swire Group.
- 19.4 All exclusions and indemnities given under this condition 19 (save for those under conditions 19.1.3 and 19.2.3 and 19) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any Claim in tort, under contract or otherwise at law.
- 19.5 If either Party becomes aware of any incident likely to give rise to a Claim under the above indemnities, they shall notify the other Party and both Parties shall co-operate fully in investigating the incident.
- 20 **Consequential Loss**
- 20.1 Swire shall save, indemnify, defend and hold harmless the Customer Group from any Consequential Loss suffered by Swire Group arising from, relating to or in connection with the performance or non-performance of any Order.
- 20.2 The Customer shall save, indemnify, defend and hold harmless Swire Group from any Consequential Loss suffered by the Customer Group arising from, relating to or in connection with the performance or non-performance of any Order.
- 21 **Limitation of liability**
- 21.1 This condition 21.1 sets out the entire liability of Swire (including any liability for the acts or omissions of its employees, agents, consultants, and sub-contractors) to the Customer in respect of:
  - 21.1.1 any breach of this Agreement; and
  - 21.1.2 any representation, statement or tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this Agreement.
- 21.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 21.3 Nothing in this Agreement limits or excludes the liability of Swire:
  - 21.3.1 for death or personal injury resulting from its negligence; or
  - 21.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by Swire; or
  - 21.3.3 for any liability incurred by the Customer as a result of any breach by Swire of the Rental Conditions.
- 21.4 Subject to condition 18, Swire's total cumulative liability to the Customer in connection with:
  - 21.4.1 the provision of the Rental Equipment and/or any Rental Unit(s) or any failure to supply the Rental Equipment and/or any Rental Unit(s) in compliance with the provisions of this Agreement), whether by way of indemnity, for breach of contract, warranty or guarantee obligations or by reason of any tort, statute or otherwise, shall be limited to the charges paid by the Customer to Swire under this Agreement in the preceding six (6) months;
  - 21.4.2 the supply or failure to supply any Sales Goods or the performance or non-performance of the Services, in compliance with the provisions of this Agreement, whether by way of indemnity, for breach of contract, warranty or guarantee obligations or by reason of any tort, statute or otherwise, shall be limited to the Contract Price as set out in the relevant Order.
- 21.5 The limitation of liability contained in condition 21.4 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of Swire or any other entity or party and shall apply irrespective of any Claim in tort, under contract or otherwise at law.
- 22 **Termination**
- 22.1 Without prejudice to any other rights or remedies which the Parties may have, either party may terminate this Agreement without liability to the other immediately on giving notice to the other if:
  - 22.1.1 the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
  - 22.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due; or the other party passes a resolution, or the court makes an order, that the other party be wound up; or a receiver, manager, or administrator on behalf of a creditor is appointed in respect of the other party's business or any part thereof; or circumstances arise which entitle the court to make a winding-up order against the other party; or an event occurs, or proceedings are taken, with respect to the other party in any jurisdiction which has an effect equivalent or similar to any of the foregoing;
  - 22.1.3 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 22.2 Swire may terminate this Agreement:
  - 22.2.1 immediately on giving notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default more than seven days after such due date;
  - 22.2.2 by giving the Customer not less than thirty (30) days' written notice at any time;

- 22.2.3 immediately on giving notice to the Customer if the Customer suffers or undergoes a Change of Control.
- 22.3 On termination of this Agreement for any reason:
- 22.3.1 the Customer shall immediately pay Swire for any Work performed in accordance with the Order up to the date of cancellation together with such reasonable costs as agreed between the Parties at the time of termination of the Order and, for the avoidance of doubt, the Customer shall pay Swire for any costs incurred manufacturing Rental Equipment and/or Rental Units in order to fulfil the Order;
- 22.3.2 the Customer shall as soon as reasonably practicable return the Rental Equipment and/or all Rental Units in accordance with condition 13. If the Customer fails to do so, then Swire may at Customer's expense enter the Customer's premises and take possession of the Rental Equipment and/or any Rental Units that have not been returned to Swire. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping and the Rental Equipment and/or Rental Units shall remain at the Customer's risk; and
- 22.3.3 the accrued rights and liabilities of the Parties as at termination, and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 22.4 On termination of this Agreement (however arising), conditions 17, 18, 19, 20, 21.3, 21.4 and 24 to 33 (inclusive) shall survive and continue in full force and effect.
- 23 **Force majeure**  
Swire shall have no liability to the Customer under this Agreement and shall not be deemed to be in breach of its obligations by reason of any delay in performing any obligations arising under any Order if it is prevented from, or delayed in performing, its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of Swire or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.
- 24 **Anti-corruption**
- 24.1 The Customer undertakes that it shall comply at all times, in all respects, with Swire's Code of Ethics (the "**Code**") or other similar policies or rules as may be issued and/or amended from time to time and notified to the Customer. Breach by the Customer of the Code or other such policies or rules shall be deemed to be a material breach by the Customer of this Agreement.
- 24.2 The Customer undertakes that it shall at all times take all steps not to become involved in any Corruption. In this condition "**Corruption**" means bribery, extortion, fraud, deception, collusion, cartels, abusive power, embezzlement, trading in influence, money-laundering, or any similar activity including, without limitation, any activity practice or conduct which would or could constitute an offence under the UK Bribery Act 2010.
- 24.3 Swire may terminate this Agreement without notice if the Customer is convicted of, or in the reasonable opinion of Swire is guilty of, any act of Corruption, or an offence under any present or future statutory enactment or regulation concerning Corruption, or any act which would have constituted such an offence if the act, having been committed outside the United Kingdom, had been committed within the United Kingdom.
- 25 **Sanctions and export controls**
- 25.1 The Customer represents and warrants that it will comply with applicable sanctions and export control legislation in its performance of the Contract, including but not limited to, laws, regulations, decisions or executive orders maintained or enforced by the European Union, Norway, the United Kingdom and the United States of America.
- 25.2 The Customer shall not sell, provide, transfer or export, directly or indirectly, the Supplier's Equipment and Services to any natural or legal person who is designated on any sanctions or restricted party list (whether by name or reason for being included in a class of persons), or is directly or indirectly owned or controlled by such designated natural or legal person, or to any project, end-use or geographical area that would expose the Supplier to a risk of violating any sanctions maintained or enforced by the European Union, Norway, the United Kingdom, the United States of America, or other applicable sanctions authority. The Customer shall make adequate and risk-based inquiries to ascertain if the project, end-use or any potential third party to which the Supplier's Equipment and Services are to be made available is subject to any sanctions, either directly or indirectly, as described in the foregoing. The Customer is responsible for obtaining all export, import or distribution licenses or permits which may be required for the Customer to lawfully conduct its business.
- 25.3 The Customer shall notify the Supplier promptly in writing upon discovery of any instance where it (i) fails to comply with any of the provisions of this Clause 25 or (ii) is designated by any government department or agency as target of sanctions or export controls. In any such event, the obligation of the Supplier to deliver any Equipment and Services may at the option of the Supplier be suspended or terminated with immediate effect without any liability for the Supplier. The Customer shall indemnify and hold harmless the Supplier from and against any losses, damages and claims arising from breach of this Clause. This indemnity shall survive termination of the Contract.
- 26 **Variation**
- 26.1 The Order shall set out a full description of the Sales Goods, Rental Equipment, Rental Units or Services required to be provided by Swire to the Customer including any specific instructions from the Customer with regards to the design of the Sales Goods (where applicable). Any amendment to the description of the Sales Goods, Rental Equipment, Rental Units or Services as set out in the Order shall require the Customer to submit a variation order to Swire. Swire shall have the right to accept or reject such variation order. If Swire rejects the variation order, Swire shall only be obliged to provide the Sales Goods, Rental Equipment, Rental Units or Services as described in the original Order and the Customer shall remain obliged to pay for and accept such Sales Goods, Rental Equipment, Rental Units or Services subject to the terms of this Agreement. If Swire agrees to accept the variation order, the Contract Price shall be varied accordingly in accordance with Swire's standard rates or, if no applicable rate exists, in accordance with a rate determined by Swire, acting reasonably.
- 26.2 Notwithstanding condition 26.1, Swire may, from time to time and without notice, alter or modify the Rental Equipment and/or any of the Rental Units in order to comply with any applicable safety or statutory requirements or for any other reason, provided that such changes do not materially affect the nature of, or the Rental Charges for, such Rental Equipment and/or Rental Units.
- 26.3 The Customer shall permit Swire such access rights as it reasonably requires in order for Swire to exercise its right under condition 26.2.
- 26.4 Subject to condition 26.2, no variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.
- 27 **Waiver**
- 27.1 No failure or delay by a party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 27.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 28 **Severance**
- 28.1 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.



- 28.2 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 29 **Entire agreement**
- 29.1 This Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.
- 29.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than any expressly set out in this Agreement as a warranty.
- 29.3 Nothing in this condition shall limit or exclude any liability for fraud.
- 30 **Assignment**
- 30.1 The Customer shall not, without the prior written consent of Swire, assign or transfer this Agreement or any part of it to any person, firm or company.
- 30.2 The Customer is not permitted to sub-let or part with possession of the Rental Equipment and/or any of the Rental Units during the Period of Hire without Swire's prior written consent. The Customer acknowledges that any breach by it of this obligation shall constitute a material breach by the Customer of this Agreement.
- 30.3 If consent to sub-let is given by Swire in accordance with condition 30.2, then without prejudice to condition 19 the Customer shall be deemed to indemnify and keep indemnified Swire, on a full indemnity basis, from and against all losses, costs, expenses, charges, liabilities and claims that Swire may suffer or incur arising out of or in connection with any act or omission of the sub-Customer, including but not limited to any act or omission of the sub-Customer which, if the sub-Customer had been a party to this Agreement in place of the Customer, would have constituted a breach of this Agreement by the Customer.
- 31 **No partnership or agency**
- Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Parties, nor (save for condition 8.2.2) to constitute either party the agent of the other for any purpose. Save as expressly set out herein, neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 32 **Rights of third parties**
- 32.1 Subject to condition 32.3, the Parties intend that no provision of this Agreement shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 ("the Act") confer any benefit on, nor be enforceable by any person who is not a Party to the Agreement.
- 32.2 For the purposes of this condition, "Third Party" shall mean any member of the Customer Group (other than the Customer) or Swire Group (other than Swire).
- 32.3 Subject to the remaining provisions of the Agreement, condition 17.5, condition 17.6, condition 19, condition 15.9 and condition 20 are intended to be enforceable by a Third Party.
- 32.4 Notwithstanding condition 32.3, the Agreement may be rescinded, amended or varied by the Parties to the Agreement without notice to or the consent of any Third Party even if, as a result that Third Party's right to enforce a term of this Agreement may be varied or extinguished.
- 32.5 The rights of any Third Party under condition 32.3 shall be subject to the following:-
- (a) any claim, or reliance on any term of the Agreement by a Third Party shall be notified in writing in accordance with the requirements of condition 19.5 and condition 33 by such Third Party as soon as such Third Party becomes aware that an event is likely to give rise to such a claim and such notification shall contain the following information as a minimum:
- i details of the occurrence giving rise to the claim; and
- ii the right relied upon by the Third Party under the Agreement;
- (b) the provisions of condition 34 shall apply in respect of any claim by a Third Party in that the relevant parties agree to resolve any dispute between them in a prompt and amicable manner by adopting the provisions of condition 34; and
- (c) the Third Party's written agreement to submit irrevocably to the jurisdiction of the English Courts in respect of all matters relating to such rights.
- 32.6 In enforcing any right to which it is entitled by virtue of the Act and the provisions of this Agreement, the remedies of a Third Party shall be limited to damages.
- 32.7 A Third Party shall not be entitled to assign any benefit or right conferred on it under this Agreement by virtue of the Act.
- 33 **Notices**
- 33.1 Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the address set out for that party above and in the case of Swire marked for the attention of the Sales Director, or as otherwise specified by the relevant party by notice in writing to the other party.
- 33.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address in accordance with condition 33.1, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 34 **Governing law and jurisdiction**
- 34.1 The Parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.
- 34.2 Each of the Parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.
- 35 **Health, Safety and Environment**
- 35.1 The Customer shall advise Swire, in writing, of any health and safety rules and procedures which apply to the Works. Swire shall comply with all of the Customer's safety rules and procedures which are intimated to Swire in writing.
- 35.2 If, in the reasonable opinion of Swire, the Designated Location or any part thereof, or any aspects thereof, fail to comply with any reasonable safety standards, including but not limited to applicable rules and regulations on health and safety in force from time to time, or would be reasonably likely to cause an accident or incident or would prevent Swire from ensuring a safe working environment for its employees, representatives, agents and Subcontractors, Swire shall, on giving written notice to the Customer, be immediately entitled to:
- i postpone commencement of the Work; and/or
- ii suspend all or any part of the Work that has been commenced and remove its employees, representatives, agents and Subcontractors from the Designated Location; until such time as the Customer has met such reasonable safety standards.
- 36 **Data Protection**

The Customer acknowledges the principles set out in Swire's privacy policy, which can be found at the following link: [www.swirees.com](http://www.swirees.com) and accepts and agrees to comply with the terms of Swire's privacy policy at all times.