

ammonite

equipment hire

These are the Standard Terms and Conditions of Ammonite ('ammonite') which may be updated from time to time by notification in writing. Where there is any inconsistency between the provisions hereof and the Order (defined below), the provisions of these Conditions will apply.

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:-

"Agreement" means the agreement incorporating these Conditions and the Order.

"Delivery Date" means the date set out in the Order.

"Equipment" means the equipment supplied by way of hire by **ammonite** as set out in the Order.

"Hirer" means the person who, in the course of their business, has agreed to hire the Equipment from **ammonite**.

"Hire Charge" means all monies payable by the Hirer pursuant to Condition 3 of these Conditions.

"Hire Period" means the dates specified in the Order.

"Order" means a provisional "Booking Form" of **ammonite**, signed by the Hirer and returned and received by **ammonite**, and which are subject to these Standard Terms and Conditions.

1.2 The headings in these Conditions are for ease of reference only and shall not affect the construction or interpretation of the Agreement.

1.3 Words denoting the singular meaning include the plural and vice versa unless the context otherwise requires.

1.4 Words of any one gender include the other gender and may be used interchangeably and words denoting natural persons include corporations and firms and all such words are to be construed interchangeably.

2. Hire of the Equipment

2.1 In consideration of the payment by the Hirer of the Hire Charge, **ammonite** agrees to hire the Equipment to the Hirer for the Hire Period subject to the conditions of the Agreement.

2.2 Each Order shall be subject to the Order being signed by the Hirer and returned and received by **ammonite** in accordance with Condition 12. Where an Order is not sent back to **ammonite** within twenty four (24) hours of being sent to the Hirer, **ammonite** may unilaterally declare or treat its offer contained in such Order as withdrawn. **ammonite** reserves the right to change its terms or refuse future orders.

3. Payment of the Hire Charge and the Price

3.1 The Hirer shall pay to **ammonite** the Hire Charge and the Price within thirty (30) days of **ammonite's** invoice. All sums due are exclusive of VAT or other applicable sales tax which shall be paid by the Hirer at the appropriate rate.

3.2. **Ammonite** reserve the right to charge a cancellation fee not exceeding the full rental charge under the Rental Agreement. Notice given for cancellation prior to commencement of hire:

28-8 days – 25% of total charge

7-2days – 50% of total charge

Less than 48 hours – 75% of total charge.

3.3 Any monies due from the Hirer to **ammonite** shall carry interest from the date due until the date of payment at the rate of 5% per month of the total outstanding and the Hirer shall pay to **ammonite** interest at the said rate together with the reasonable collection and/or legal costs of the Company incurred in seeking to recover payment of monies due from the Hirer, whether or not proceedings are commenced.

4. Delivery

4.1 **ammonite** shall use all reasonable endeavours to deliver the Equipment to the Hirer on the Delivery Date. For the avoidance of doubt the time for delivery shall not be of the essence and **ammonite** shall have no liability to the Hirer if it fails to meet any requested or estimated date for delivery.

terms & conditions

page 2 of 4

5. Hirer's Obligations

During the Hire Period, the Hirer shall:

- 5.1 keep the Equipment fully insured against all risks of loss and damage, to the full replacement value of the Equipment, from the time that delivery is effected or tendered until the Equipment is returned to **ammonite** and provide forthwith to **ammonite** at **ammonite's** reasonable request, a copy of the certificate of such insurance;
- 5.2 ensure that the Equipment is used in a proper manner by competent trained employees only or by persons under their immediate supervision;
- 5.3 keep and operate the Equipment in a proper and prudent manner;
- 5.4 ensure that the external surfaces of the Equipment are kept clean and in a good condition;
- 5.5 not itself, nor permit its employees, agents, sub-contractors or servants to take the Equipment outside of the United Kingdom of Great Britain and Northern Ireland without the prior written consent of **ammonite**. Such consent shall not be unreasonably withheld subject always to the Hirer arranging and paying for the insurance of the Equipment to the full replacement value for such time as the Equipment is overseas;
- 5.6 not alter, erase, deface or overprint any trade mark or any other notice of proprietary rights placed by **ammonite** on the Equipment; and
- 5.7 store or otherwise keep the Equipment in such a way as clearly to indicate at all times that the Equipment is owned by **ammonite** and shall not remove, obscure or delete any mark placed on the Equipment by **ammonite** which may enable the Equipment to be so identified.

6. Title to the Equipment

- 6.1 The Equipment shall at all times remain the property of **ammonite**.
- 6.2 The Hirer hereby grants an irrevocable licence to **ammonite**, its agents and servants to enter into its premises and collect the Equipment if the Hirer is in breach of Conditions 3 or 5 or if **ammonite** has, in any way whatsoever, dealt with or attempted to deal with the Equipment as either legal or equitable owner.

7. Warranties

- 7.1 Subject to the exception set out in Condition 7.3 below and the limitations upon its liability in Condition 11 below, **ammonite** warrants and undertakes to the Hirer that:-
 - (a) Its title to and property in the Equipment are free and unencumbered and that it has the right, power and authority to enter into the Agreement;
 - (b) Any services provided by **ammonite** under the Agreement shall be supplied and rendered with reasonable skill, care and diligence by appropriately experienced, qualified and trained personnel in accordance with good industry practice; and
 - (c) The Equipment supplied to the Hirer shall be of satisfactory quality, reasonably fit for their purpose and free from defects in design, materials and workmanship. For the avoidance of doubt **ammonite** makes no warranties as to the suitability of the Equipment.
- 7.2 The Hirer warrants and undertakes to **ammonite** that it is, and shall remain throughout the Hire Period free and entitled to enter into the Agreement.
- 7.3 Subject to Condition 7.1, the Hirer acknowledges and accepts that **ammonite** gives no warranties of any kind in relation to the Equipment or and that any conditions, warranties, terms and undertakings which would otherwise be implied into the Agreement (whether by statute or otherwise) relating to the Equipment, or the provision of any other goods or services by **ammonite** to the Hirer under the terms of the Agreement are hereby excluded to the fullest extent permitted by law.

8. Defects Warranty

- 8.1 Except as provided below, **ammonite** shall be responsible, without charge to the Hirer, for rectifying as soon as reasonably practicable any defect which appears in the Equipment ("the Defects Warranty"). For the purposes of this Condition 8, a "Defect" means any non-conformance with a warranty specified in Condition 7.1(c).
- 8.2 **ammonite's** obligations under the Defects Warranty are contingent upon **ammonite** being given details of the Defect and adequate time to rectify such Defect. If **ammonite** rectifies the Defect within a reasonable period of time then it shall have no other liability of any kind in respect of or arising from such Defect.
- 8.3 Where the malfunction in the Equipment is due to the default of the Hirer under Condition 8.4, **ammonite** may charge the Hirer for the repair of the Equipment in accordance with its standard scale of charges from time to time, including but not limited to the costs of repair, removal and transportation of the Equipment.

terms & conditions

page 3 of 4

8.4 The Defects Warranty shall not include repairs of the Equipment necessitated otherwise than by fair wear and tear, or by the neglect or default of the Hirer, including but not limited to:

- (a) Defects or errors resulting from any modifications of the Equipment made by the Hirer or any person other than a person acting on behalf of **ammonite**;
- (b) Incorrect use of the Equipment or operator error;
- (c) Any attempt by any person other than **ammonite's** personnel to adjust, repair or maintain the Equipment;
- (d) Defects or errors resulting from any fluctuation of electric power, humidity controls or other adverse environmental conditions due to whatever cause;
- (e) Accident, transportation, neglect, misuse or default of the Hirer, its employees or agents or any third party; or
- (f) An event of force majeure, as defined in Condition 11.

9. Limitation of Liability

9.1 Nothing in the Agreement shall operate to exclude or limit **ammonite's** liability for:

- (a) Death or personal injury caused by the negligence of **ammonite**, its servants, agents, employees or subcontractors;
- (b) Any breach or contravention of the conditions implied by Section 12 of the Sale of Goods Act 1979 and Section 2 Supply of Goods and Services Act 1982;
- (c) Fraudulent misrepresentation; or
- (d) Any breach of any undertaking as to title, quiet possession and freedom from encumbrance implied by law.

9.2 Subject to Condition 9.1, **ammonite** shall not be liable to the Hirer for any loss of, damage to or costs in respect of:

- (a) Loss of profit, anticipated profits, revenues, anticipated savings;
- (b) Goodwill or business opportunity;
- (c) Indirect or consequential loss or damage whether foreseeable, known, foreseen or otherwise.

9.3 **ammonite** shall be liable for physical damage to the Hirer's tangible property resulting from its negligence up to a maximum of twice the Hire Charge.

9.4 **ammonite's** liability for a misrepresentation as to a matter fundamental to its ability to perform the Agreement shall be subject to the limit set out in Condition 9.3.

10. Term and Termination

10.1 Subject to Condition 10.3, the Agreement shall commence on the date on which **ammonite** accepts the Order in writing and shall continue in force for the Hire Period.

10.2 Without prejudice to any other remedies available, either party shall be entitled to terminate the Agreement with immediate effect by giving written notice of termination to the other if:

- (a) The other commits a material breach of the Agreement which, in the case of a breach capable of remedy, shall not have been remedied within fourteen (14) days of the receipt by the other of a notice identifying the breach and requiring its remedy. Upon remedy, the party in breach shall provide proof of remedy within ten (10) days thereof; or
- (b) If the other party passes a resolution for winding up (other than for the purpose of a solvent amalgamation or reconstruction) or if it shall cease or threaten to cease to carry on its business or substantially the whole of its business or it becomes or is declared insolvent, bankrupt or convenes a meeting of or proposes to make any arrangement or composition with its creditors or if a liquidator, receiver, administrator or trustee or similar officer is appointed over the assets of it or any analogous step is taken in connection with insolvency or dissolution.

10.3 Without prejudice to any other remedies available, **ammonite** may terminate the Agreement with immediate effect if any payment due by the Hirer shall be outstanding for more than seven (7) days.

10.4 Conditions 6, 7, 8 and 9 shall survive termination of this Agreement.

10.5 Any termination of the Agreement shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law.

10.6 At the end of the Hire Period or (if earlier) immediately upon termination of the Agreement, the Hirer shall, at its own expense, forthwith return to **ammonite** all Equipment supplied to the Hirer by **ammonite** under the conditions of the Agreement.

11. Force Majeure

11.1 Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying (including, without limitation, any act of God, fire, flood, strike, lock-out or other form of industrial action).

terms & conditions

page 4 of 4

12. Notices

12.1 Any notice or other document to be given under the Agreement shall be in writing and delivered or sent by hand-delivery, e-mail or facsimile transmission (to the address or e-mail or facsimile number of the other party set out in the Order (or such other address or number as may have been notified) and any such notice or other document shall be deemed to have been served and/or delivered (if hand-delivered) at the time of delivery or (if sent by e-mail or facsimile transmission) upon the expiration of twelve (12) hours after dispatch.

13. Assignment And Sub-Licensing

13.1 The Hirer shall not be entitled to assign, transfer, sell, sub-license, lease, rent, charge or otherwise deal in or otherwise encumber the Equipment unless the express written consent of **ammonite** is first obtained.

13.2 Subject to the prior written consent of the Hirer, which shall not be unreasonably withheld or delayed, **ammonite** may assign the Agreement or any of its rights and obligations hereunder to any other party.

14. General

14.1 If any provision in the Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that provision or part thereof shall to that extent be deemed not to form part of the Agreement and the enforceability of the remainder of the Agreement or any part hereof shall not be affected.

14.2 Subject to any variation under Condition 14.3, the terms and conditions of the Agreement shall apply as between the parties in respect of the subject matter hereof to the exclusion of all other terms and conditions (including any terms and conditions that the Hirer purports to apply).

14.3 The Agreement contains the entire understanding of the parties with respect of the subject matter hereof, supersedes all prior agreements and may not be modified or amended by the parties by a written instrument signed by both parties.

14.4 **ammonite** shall not be liable to the Hirer for loss arising from or in connection with any representations (except fraudulent), agreements, statements or undertakings made prior to the date of execution of the Agreement.

14.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of the Agreement, the Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

14.6 The Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English Courts.

14.7 No failure of either party to exercise, and no delay in exercising, any right or remedy in respect of any condition herein contained shall operate as a waiver of such right or remedy.

14.8 **ammonite** and the Hirer are each independent contractors with respect to each other and nothing in the Agreement shall create any association, partnership or joint venture relationship between them.

14.9 The Agreement may not be modified or amended except in writing signed by a director of each of the parties.

terms accepted on behalf of The Hirer

date

on behalf of **ammonite**

date

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