

# Harsco Infrastructure Services Limited

## Terms of Hire

### Cabins and Modular Buildings

Edition 2009/1 – effective from 15 December 2009

The Hirer's attention is drawn in particular to:

- clause 24 - the rights of the Hirer where the Hirer is a consumer;
- clauses 16.2 and 17.4 - the Hirer's liability in relation to the Equipment;
- clause 19 - the Hirer's liability to insure
- clauses 11.5, 17.8 and 22 - the limitation of Harsco Infrastructure's liability.

#### 1. Interpretation

- 1.1. In this document -  
Business Day means a day that is not a Saturday, Sunday or public holiday in England;  
Charges mean the charges referred to in clause 7.1;  
Consumer means a consumer as defined in the Unfair Contract Terms Act 1977 Section 12 as amended or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1);  
Contract means the contract for the hire of the Equipment for the Hire Period between Harsco Infrastructure and the Hirer which comes into existence on the Hirer accepting the Quotation or Harsco Infrastructure accepting the Order (as the case may be);  
Default Event means an event set out in clause 21.1;  
Delivery Date means the date referred to in clause 11.1;  
Equipment means the equipment to be hired by Harsco Infrastructure as set out in the Quotation or Order (subject to clauses 4.4 and 5.2) (as the case may be);  
Hire Period means the period commencing on (and including) the Hire Commencement Date and terminating on (and including) the Hire Termination Date;  
Hirer means the person to whom a Quotation is made or who makes an Order (as the case may be);  
Hire Commencement Date means date referred to in clause 6.1;  
Hire Termination Date means the date referred to in clause 6.2;  
Installation means any installation of the Equipment which Harsco Infrastructure is required to undertake at the Site in terms of the Contract and "install" shall have the corresponding meaning;  
Main Hire Details means details of the Equipment, the Hire Commencement Date, the Hire Termination Date, the Minimum Hire Period, the Delivery Date, the Hirer's address, the Charges, the deposit to be paid by the Hirer under clause 10 and Harsco Infrastructure's obligations in respect of the matters referred to in clauses 13.1, 14.1, 15.1, 15.4 and 15.5 and any technical drawings and specifications forming part of the Contract;  
Minimum Hire Period means the period (if any) referred to as such in the Quotation or Order Confirmation (as the case may be) which commences on the Hire Commencement Date;  
Notice Termination Period means the period referred to in clauses 6.3.3 or 6.3.4 (as the case may be);  
Order means the Hirer's order (whether written or oral) to Harsco Infrastructure for Harsco Infrastructure to hire the Equipment to the Hirer;  
Order Confirmation means the confirmation referred to in clause 4.2;  
Product Literature has the meaning given to it in clause 16.6;  
Property Policy means the policy referred to in clause 19.1.1;  
Public Liability Policy means the policy in clause 19.1.2;  
Quotation means Harsco Infrastructure's written quotation to the Hirer for Harsco Infrastructure to hire the Equipment to the Hirer;  
Risk Termination Date means the time of return of the Equipment in terms of clause 12 or the Hire Termination Date, whichever is the later;  
Harsco Infrastructure means Harsco Infrastructure Services Limited, registered in England and Wales under number 276562 and having its registered office at Harsco House, Regent Park, 299 Kingston Road, Leatherhead, Surrey, KT22 7SG, United Kingdom;  
Site means the site on which the Equipment is to be positioned;  
Terms means the standard terms of hire set out in this document and (unless the context otherwise requires) any special terms agreed in writing between Harsco Infrastructure and the Hirer; and  
Total Loss means the loss referred to in clause 18.1.
- 1.2. A reference in the Terms to a provision of a statute is to be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. Unless the context otherwise requires –  
1.3.1. another grammatical form of a defined word or expression will have a corresponding meaning;  
1.3.2. the singular includes the plural and vice versa;  
1.3.3. a reference to one gender includes all genders;  
1.3.4. words denoting persons include firms and corporations and vice versa;  
1.3.5. any phrase introduced by the term "including", "include", "in particular" or any similar expression is to be construed as illustrative and will not limit the sense of the words preceding the term; and  
1.3.6. the phrase "as set out in the Order" or similar expression is, in relation to an oral Order, to be construed as "as provided by the Hirer when making the Order".
- 1.4. Unless otherwise stated, a reference to a clause is a reference to a clause in this document.
- 1.5. The clause headings in this document are for convenience only and will not affect the construction of the Terms.

#### 2. Basis of hire

- 2.1. The Terms will govern the Contract to the exclusion of any other terms, including any terms which the Hirer purports to apply in accepting the Quotation, making the Order or under any other document.
- 2.2. No variation to the Terms will be binding unless agreed to in writing by Harsco Infrastructure and the Hirer.
- 2.3. No Order (which has been accepted by Harsco Infrastructure) or Quotation (which has been accepted by the Hirer) (as the case may be) may be cancelled by the Hirer except with the written agreement of Harsco Infrastructure and on terms that the Hirer shall indemnify Harsco Infrastructure in full against all loss, damages, charges and expenses incurred by Harsco Infrastructure as a result of the cancellation.

#### 3. Quotations

- 3.1. Unless otherwise stated in it, the Quotation -  
3.1.1. is (subject to clause 3.1.2) open for acceptance for 30 days from the date on which it was given;  
3.1.2. may be withdrawn at any time before acceptance by the Hirer;  
3.1.3. is subject to the availability of the Equipment at the time it is accepted by the Hirer; and  
3.1.4. will only be regarded as having been accepted by the Hirer when Harsco Infrastructure actually receives the Hirer's acceptance.

#### 4. Orders and Order Confirmations

- 4.1. The acceptance by the Hirer of any oral quotation given by Harsco Infrastructure for Harsco Infrastructure to hire the Equipment to the Hirer will be deemed to be an offer by the Hirer to hire the Equipment (i.e. an Order) which Harsco Infrastructure may in its discretion accept or reject.
- 4.2. Harsco Infrastructure shall, within 3 Business Days of the acceptance of an Order, confirm the Main Hire Details in writing to the Hirer ("Order Confirmation").
- 4.3. The Hirer shall within 2 Business Days of receipt of the Order Confirmation advise Harsco Infrastructure in writing of any inaccuracies in the Order Confirmation.
- 4.4. If the Hirer in writing confirms the accuracy of the Main Hire Details as set out in the Order Confirmation or fails to advise Harsco Infrastructure in writing of any inaccuracies in the Order Confirmation within the time period set out in clause 4.3, the Main Hire Details shall be regarded as forming part of the Contract to the exclusion of and notwithstanding that they may be contrary to those set out in the Order.
5. Equipment
- 5.1. If more than one item of Equipment is set out in the Quotation or Order Confirmation (as the case may be), separate and distinct contracts in respect of each item of Equipment will be deemed to have come into existence on the Hirer accepting the Quotation or Harsco Infrastructure accepting the Order (as the case may be).
- 5.2. If the Equipment (or any part) is for any reason whatsoever not available at the time Harsco Infrastructure is required to deliver the Equipment to the Hirer, Harsco Infrastructure may fulfil its obligations in terms of the Contract by delivering to the Hirer substitute equipment. The substitute equipment will for all purposes be regarded as the Equipment (or part) required to be delivered in terms of the Contract.

- 5.3. Except for any representation set out in the Product Literature, Harsco Infrastructure's employees or agents are not authorised to make any representations concerning the Equipment. In entering into the Contract, the Hirer acknowledges that it did not rely on any representations which are not set out in the Product Literature at the time that the Contract came into existence.

- 5.4. Unless otherwise specifically agreed to in writing by Harsco Infrastructure, and subject to clause 5.5, all samples, drawings, illustrations, descriptions or specifications of the Equipment issued or published by Harsco Infrastructure (including any descriptions or illustrations of the Equipment in any advertising material, catalogues, brochures or price lists) are for the sole purpose of giving the Hirer an approximate idea of the Equipment and do not form part of the Contract.
- 5.5. Technical drawings and specifications prepared in relation to the Equipment and/or the Site and referred to in the Quotation or Order Confirmation (as the case may be) are excluded from the provisions of clause 5.4 and form part of the Contract.
- 5.6. The hire of the Equipment is not a hire by sample.

#### 6. Hire Period

- 6.1. The Hire Commencement Date will be –  
6.1.1. the date (if any) set out in the Quotation or Order Confirmation (as the case may be) on which the hire of the Equipment is to commence; and  
6.1.2. if no date is set out on the Quotation or Order Confirmation, the Delivery Date.
- 6.2. The Hire Termination Date will be –  
6.2.1. the date set out in the Quotation or Order Confirmation (as the case may be) for the termination of the hire of the Equipment; and  
6.2.2. if no date for the termination is set out in the Quotation or Order Confirmation or the hire period is indicated to be indefinite, subject to clause 6.3, the date declared by either party to the other as the date for the termination of the hire of the Equipment.
- 6.3. Any declaration by a party to the other in terms of clause 6.2.2 –  
6.3.1. must be in writing;  
6.3.2. may not result in the hire of the Equipment terminating before the expiry of the Minimum Hire Period;  
6.3.3. must be on the notice period as set out in the Quotation or the Order Confirmation (as the case may be); and  
6.3.4. if no notice period is set out in the Quotation or Order Confirmation -  
6.3.4.1. in the case of a modular building, must be on 3 months notice; and  
6.3.4.2. in any other case, must be on 30 days notice.

#### 7. Charges

- 7.1. The Charges will be the hire charges or periodic hire charges due by the Hirer to Harsco Infrastructure for the Hire of the Equipment as set out in the Quotation or the Order Confirmation (as the case may be).
- 7.2. Where no date for the termination of the hire of the Equipment is set out in the Quotation or Order Confirmation (as the case may be) or the hire period is indicated to be indefinite, Harsco Infrastructure may after the Minimum Hire Period (if any), and on written notice to the Hirer of a period at least equal to the Notice Termination Period plus 10 days, increase the Charges to the amount set out in this notice.
- 7.3. Except as otherwise stated in the Quotation or the Order Confirmation (as the case may be), all Charges are on the basis that the Hirer will be liable for all other amounts stated in the Terms as being due by or the responsibility of the Hirer.
- 7.4. All amounts due by the Hirer to Harsco Infrastructure in terms of the Contract are exclusive of any applicable value added tax, which the Hirer shall pay to Harsco Infrastructure when it pays such amounts.
- 7.5. If the Hirer returns the Equipment to Harsco Infrastructure prior to the Hire Termination Date, the Hirer shall not be entitled to any rebate, discount or reduction in the Charges and Harsco Infrastructure shall be entitled to recover the Charges for the full Hire Period from the Hirer as well as any other amounts payable by the Hirer pursuant to these Terms.

#### 8. Terms of payment

- 8.1. Harsco Infrastructure may invoice the Hirer on the Hire Commencement Date –  
8.1.1. any one-off Charge;  
8.1.2. the first periodic Charge; and  
8.1.3. the charges or estimate of charges referred to in clauses 12.2, 13.2, 14.2, 15.2, 15.6.1 and 21.2.3.
- 8.2. Harsco Infrastructure may on the first day of each subsequent month during the Hire Period invoice the Hirer the periodic charge in respect of the month concerned.
- 8.3. Harsco Infrastructure may invoice the Hirer for any other amounts due by the Hirer to Harsco Infrastructure in terms of the Contract at the time or at any time after the Hirer becomes liable for such amounts.
- 8.4. If the Hire is terminated prior to the period in respect of which the Hirer has paid the Charges, Harsco Infrastructure shall, within a reasonable period after the Risk Termination Date reconcile the Charges invoiced and the Charges due and account to the Hirer.
- 8.5. Subject to clause 9, the Hirer shall pay all amounts due by the Hirer to Harsco Infrastructure in terms of the Contract (in cleared funds) on receipt of Harsco Infrastructure's invoice.
- 8.6. The time for payment of all amounts due by the Hirer to Harsco Infrastructure in terms of the Contract is of the essence of the Contract.
- 8.7. Harsco Infrastructure will only issue receipts for payments on written request.
- 8.8. The Hirer shall pay all amounts due under the Contract in full without any deduction, whether by way of set-off (including equitable set-off), counterclaim, discount, abatement or otherwise.
- 8.9. Harsco Infrastructure may appropriate any payments made by the Hirer (including any deposit paid in terms of clause 10) in or towards the satisfaction of any sums due by the Hirer to Harsco Infrastructure (whether in terms of the Contract or on any account) and notwithstanding that the Hirer may have purported to appropriate such payments in some other way.

#### 9. Credit

- 9.1. If Harsco Infrastructure has in writing agreed to grant the Hirer credit in relation to any amount due to Harsco Infrastructure in terms of the Contract, the Hirer shall pay such amount within 30 days of the date of Harsco Infrastructure's invoice.
- 9.2. Harsco Infrastructure may in its discretion at any time and from time to time -  
9.2.1. review the basis for granting the Hirer credit; and  
9.2.2. withdraw or reduce the amount of credit granted to the Hirer.
- 9.3. If at any time the amount due by the Hirer to Harsco Infrastructure (whether in terms of the Contract or on any account) is in excess of the Hirer's credit limit, the Hirer shall immediately pay to Harsco Infrastructure such amount as will bring the Hirer within its credit limit.
- 9.4. The provisions of clause 21.1.6 will mutatis mutandis (i.e. with the necessary changes) apply to any amount the Hirer is required to pay under clause 9.3 and fails to pay.
- 9.5. The Hirer authorises Harsco Infrastructure to carry out checks on the Hirer with credit reference agencies and at any time and from time to time provide the agencies with information as to the manner in which the Hirer conducts its account with Harsco Infrastructure. The Hirer acknowledges that the agencies concerned may share this information with other credit reference agencies and businesses conducting credit or fraud prevention checks on the Hirer.

#### 10. Deposit

- 10.1. Harsco Infrastructure may at any time and from time to time require the Hirer to pay to Harsco Infrastructure a deposit of up to the amount estimated by Harsco Infrastructure to be the replacement value of the Equipment and the aggregate Charges and other amounts that will be due by the Hirer to Harsco Infrastructure in terms of the Contract.
- 10.2. Harsco Infrastructure shall return the deposit (less any amounts appropriated in terms of clause 8.8) within a reasonable time after the Risk Termination Date.

- 11. Delivery of the Equipment**
- 11.1. The Delivery Date will be the date on which Harsco Infrastructure delivers the Equipment to the agreed place of delivery prior to it being unloaded or installed.
- 11.2. Any date quoted or agreed for the delivery or Installation of the Equipment is approximate only.
- 11.3. Harsco Infrastructure will not be liable for and the Hirer shall not be entitled to any rebate, discount or reduction in the Charges in respect of any loss or damage suffered or expense or cost incurred by the Hirer (including any loss or damage suffered or expense or cost incurred as a result of Harsco Infrastructure's negligence) arising out of or in connection with any delay in delivery or Installation of the Equipment.
- 11.4. Time for the delivery or Installation of the Equipment is not of the essence of the Contract.
- 11.5. If Harsco Infrastructure fails to deliver and/or Install the Equipment for any reason (other than as a result of the Hirer's fault) and Harsco Infrastructure is liable to the Hirer, Harsco Infrastructure's liability will be limited to 5% of the aggregate Charges (of the Equipment not delivered and/or Installed) that would be payable by the Hirer during the Hire Period (assuming that any notice required in terms of clause 6.2.2 to terminate the hire of the Equipment was given at the earliest opportunity) or £100,000, whichever is the lesser.
- 11.6. The Hirer shall within 3 Business Days of the delivery of the Equipment or Installation (whichever is the later), notify Harsco Infrastructure in writing of any defect in the Equipment on delivery or Installation (as the case may be) which was apparent on a reasonable inspection of the Equipment at the time of delivery or Installation (as the case may be).
- 11.7. Subject to any defect in the Equipment of which Harsco Infrastructure has received notice in terms of clause 11.6, the Equipment will on delivery or Installation (as the case may be), be deemed to be complete, in good order and condition, fit for the purpose for which it is required and in every way satisfactory to the Hirer.
- 12. Return of the Equipment**
- 12.1. The Hirer shall, subject to clause 12.2, return the Equipment to Harsco Infrastructure on the earlier of the Hire Termination Date and the termination of the Contract (for whatever reason) by making the Equipment available to Harsco Infrastructure at the agreed place of return.
- 12.2. Where Harsco Infrastructure is required to dismantle and/or uninstall the Equipment prior to the Hirer returning the Equipment to Harsco Infrastructure, the Hirer shall allow Harsco Infrastructure sufficient time to complete the dismantling and/or uninstallment of the Equipment to enable the Hirer to return the Equipment on the Hire Termination Date. Harsco Infrastructure may levy an additional Charge for dismantling or uninstalling the Equipment.
- 12.3. The Hirer shall ensure that at the time that the Equipment is returned to Harsco Infrastructure it is in a clean state and in good and proper working order and condition, fair wear and tear excepted.
- 12.4. Without in any way limiting the provisions of clause 12.3, the Hirer shall ensure that -
- 12.4.1. no items of the Hirer are left in the Equipment, all debris is removed from the Equipment, any effluent tanks in the Equipment are emptied and the Equipment is generally in such a condition that Harsco Infrastructure could re-hire the Equipment to another customer without any further cleaning; and
- 12.4.2. the Equipment is returned with a full set of keys.
- 12.5. If the Hirer fails to return the Equipment in the condition set out in clause 12.3, the Hirer shall be liable to pay Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in returning the Equipment to a condition as contemplated by clause 12.3.
- 12.6. Any receipt issued by Harsco Infrastructure at the time of the return of the Equipment will not in any way serve to signify that the Equipment was returned complete and in a clean state and in good and proper working order and condition.
- 12.7. If the Hirer at any time replaces the locks on the Equipment and the replacement locks are not of a make, model or size that has been approved in advance by Harsco Infrastructure, the Hirer shall be liable to pay Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in replacing such replacement locks.
- 13. Transport, loading and unloading of the Equipment**
- 13.1. Unless otherwise stated in the Quotation or Order Confirmation (as the case may be) the Hirer shall -
- 13.1.1. be liable to pay Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in -
- 13.1.1.1. the loading and the unloading of the Equipment at Harsco Infrastructure's premises and the Site;
- 13.1.1.2. transporting the Equipment to the agreed place of delivery or from the Site or the agreed place of return (as the case may be); and
- 13.1.1.3. insuring and packaging the Equipment.
- 13.1.2. obtain all permissions, consents and licences required (including those required from the owner or occupier of any property or under any legislation or regulation) for the delivery, return, collection or removal of the Equipment (and the passing over of any other property or roads necessary to gain access to place where the Equipment is to be set);
- 13.1.3. ensure that there is unrestricted entry and approach to the place where the Equipment is to be set or retrieved;
- 13.1.4. ensure that any ground (or road) over which the Equipment (and any equipment necessary for the unloading or loading (as the case may be) of the Equipment) has to pass is suitably stable; and
- 13.1.5. ensure that the ground in and around the place where the Equipment is to be set or retrieved is suitably stable.
- 13.2. If, in terms of the Contract, Harsco Infrastructure is required to undertake any of the matters referred to in clause 13.1, the Hirer shall be liable to pay Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in undertaking such matters.
- 13.3. If at the time of the delivery, return, unloading or loading (as the case may be) of the Equipment, conditions are (in Harsco Infrastructure's opinion) such that the delivery, return, unloading or loading (as the case may be) cannot be carried out safely or without undue risk of injury to person or damage to property, Harsco Infrastructure may postpone the delivery or return (as the case may be) of the Equipment.
- 13.4. Where the Hirer (or its employees, agents or contractors) undertakes the loading or unloading (as the case may be) of the Equipment, the Hirer shall indemnify Harsco Infrastructure, its employees, agents and subcontractors against all loss, damages, costs and expenses awarded against, incurred, paid or agreed to be paid by Harsco Infrastructure, its employees, agents and subcontractors (or any of them) arising out of or in connection with the loading or unloading (as the case may be) of the Equipment.
- 14. The Site**
- 14.1. Unless otherwise stated in the Quotation or the Order Confirmation (as the case may be), the Hirer shall (at its cost) obtain all permissions, consents and licences required (including those required from the owner of the Site or under any legislation or regulation) for -
- 14.1.1. the setting of the Equipment on or within premises on the Site; and
- 14.1.2. the removal of the Equipment from the Site on the termination of the hire of the Equipment.
- 14.2. If, in terms of the Contract, Harsco Infrastructure is required to undertake any of the matters referred to in clause 14.1, the Hirer shall be liable to pay Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in undertaking such matters.
- 14.3. The Hirer grants or warrants that it has procured the grant to Harsco Infrastructure, its employees agents and contractors (with whatever equipment may be appropriate or necessary) an irrevocable licence to enter the Site (and in the case of clauses 14.3.3 to 14.3.6, any other premises where the Equipment (or any part) is situated or stored) at any time for the purposes of -
- 14.3.1. delivering the Equipment;
- 14.3.2. installing the Equipment;
- 14.3.3. inspecting the Equipment;
- 14.3.4. adjusting, repairing or replacing the Equipment;
- 14.3.5. uninstalling and/or removing the Equipment (if Harsco Infrastructure is required or entitled to uninstall and/or remove the Equipment); and
- 14.3.6. generally fulfilling Harsco Infrastructure's obligations in terms of the Contract.
15. Foundations, installation and services
- 15.1. Unless otherwise stated in the Quotation or the Order Confirmation (as the case may be), the Hirer shall (at its cost) ensure that the area on which the Equipment is to be set is suitably prepared for the Equipment and in accordance with Harsco Infrastructure's instructions (if any).
- 15.2. If, in terms of the Contract, Harsco Infrastructure is required to -
- 15.2.1. undertake any of the matters referred to in clause 15.1; or
- 15.2.2. install the Equipment; the Hirer shall be liable to pay Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in undertaking such matters.
- 15.3. The copyright in any drawings and other literature relating to the Equipment or its siting provided by Harsco Infrastructure to the Hirer shall remain the property of Harsco Infrastructure and shall be used solely in relation to the Equipment and, as applicable, its siting. Harsco Infrastructure gives no warranty as to the suitability, fitness for purpose, sufficiency or accuracy of any drawings relating to the siting provided by Harsco Infrastructure to the Hirer and the Hirer must carry out its own due diligence in this regard.
- 15.4. If electricity and other services can be connected to the Equipment and the Hirer requires any such services, unless otherwise stated in the Quotation or the Order Confirmation (as the case may be) the Hirer shall (at its cost) arrange for the connection of such services by a suitably qualified contractor.
- 15.5. Unless otherwise stated in the Quotation or the Order Confirmation (as the case may be), the Hirer shall (at its cost) arrange for the disconnection of any such services by a suitably qualified contractor at the time the Equipment is to be returned to Harsco Infrastructure.
- 15.6. If, in terms of the Contract, Harsco Infrastructure is required to undertake the matters referred to in clauses 15.4 and/or 15.5, the Hirer shall -
- 15.6.1. be liable to pay Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in undertaking such matters; and
- 15.6.2. (at its cost) provide Harsco Infrastructure with all facilities and services (including electricity) reasonably required in relation to such matters.
- 15.7. Where any of the services referred to in clause 15.4 are from time to time required to be tested or checked (whether in terms of legislation, any regulation, the Product Literature, best practise or otherwise), the Hirer shall (at its cost) ensure the necessity tests or checks are carried out.
- 15.8. The Equipment shall not be set where it is inaccessible or in a position which (in Harsco Infrastructure's opinion) may result in undue deterioration.
- 15.9. The Equipment will at no time be annexed to any land.
- 15.10. Unless otherwise stated in the Quotation or Order Confirmation (as the case may be) the Hirer shall be liable to pay Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in respect of installation of the Equipment.
- 16. Use of the Equipment**
- 16.1. The Hirer shall ensure that -
- 16.1.1. the Equipment is at all times in its possession and under its control;
- 16.1.2. the Equipment is only used for its normal and obvious purpose or otherwise as set out in the Product Literature;
- 16.1.3. adequate and proper measures are taken to protect the Equipment from theft, damage and other risks;
- 16.1.4. the Equipment is not used in a manner which (in Harsco Infrastructure's opinion) may result in undue deterioration;
- 16.1.5. the Equipment is not used in a manner which is not permitted in terms of any policy of insurance referred to in clause 19 and that nothing is done which could result in any such policy being invalidated;
- 16.1.6. the Equipment is not altered modified or repainted in any way;
- 16.1.7. any numbers, distinguishing marks or notices on the Equipment are not removed, altered, defaced or otherwise tampered with;
- 16.1.8. any person using the Equipment is made aware of and complies with any notices on the Equipment, the provisions of this clause, the Product Literature (if any) and best practice;
- 16.1.9. all persons entering the Equipment comply with any anti-smoking legislation then in force;
- 16.1.10. no nails or other fixings are used on the Equipment; and
- 16.1.11. the Equipment is not removed from the Site without Harsco Infrastructure's prior written consent (other than to return it to Harsco Infrastructure in terms of clause 12).
- 16.2. The Hirer shall indemnify Harsco Infrastructure, its employees, agents and subcontractors against all loss, damages, costs and expenses awarded against, incurred, paid or agreed to be paid by Harsco Infrastructure, its employees, agents and subcontractors (or any of them) in connection with any claim which arises out of the possession, use or siting of the Equipment during the period commencing on the Delivery Date and ending at the Risk Termination Date.
- 16.3. Harsco Infrastructure (or its agents or representatives) shall be entitled to inspect and examine the Equipment at all reasonable times.
- 16.4. The Hirer may not -
- 16.4.1. sub-let the Equipment without Harsco Infrastructure's prior written consent; and
- 16.4.2. sell, transfer, mortgage, pledge, encumber, charge or otherwise deal with the Equipment.
- 16.5. The Hirer shall immediately advise Harsco Infrastructure (by telephone and in writing) if the Equipment (or any part of the Equipment) is lost, damaged, requires adjustment, is defective in any way, is in need of repair or involved in any incident where a person is injured.
- 16.6. Product Literature "means -
- 16.6.1. any representation, advice, instruction or recommendation given in writing by an employee of Harsco Infrastructure holding the position of branch manager or above to the Hirer which is specific to the Equipment (or any part) (but only to the extent that it is not contrary to that contained in any subsequently issued or published guide referred to in clause 16.6.3 or any subsequently issued or published notice referred to in clause 16.6.4);
- 16.6.2. any notices on the Equipment (or any part) or its packaging (but only to the extent that it is not contrary to any advice, instruction or recommendation in any subsequently issued or published guide referred to in clause 16.6.3 or any subsequently issued or published notice referred to in clause 16.6.4);
- 16.6.3. the most recent and generally available user guide (or part of a user guide) and safety guide (or part of a safety guide) issued or published by Harsco Infrastructure which is specific to the Equipment (or any part) (but only to the extent that it is not contrary to any advice, instruction or recommendation in any subsequently issued or published notice referred to in clause 16.6.4); and
- 16.6.4. any notice issued or published on the internet at [www.harsco-i.co.uk/legal](http://www.harsco-i.co.uk/legal) which is specific to the Equipment (or any part).
- 16.7. The Hirer accepts that any notice issued or published by Harsco Infrastructure in terms of clause 16.6.4 concerning the Equipment (or any part), including any defect in the design or quality of the Equipment (or any part) which could affect the manner in which the Equipment (or any part) should be used or safely used, will be adequate and sufficient notice to the Hirer.
- 16.8. If the Hirer requests Harsco Infrastructure to postpone delivery and/or the Installation of the Equipment and Harsco Infrastructure agrees to do so, the Hirer shall be liable to Harsco Infrastructure for all costs, expenses and losses incurred by Harsco Infrastructure as a result of the postponement (including the costs of storing, insuring and re-delivery and the Charges that would have been due to Harsco Infrastructure if the Equipment had been duly delivered and/or Installed).
- 16.9. Harsco Infrastructure shall deliver and/or Install any Equipment (the delivery or Instalment of which was postponed in terms of clause 16.8 on the new agreed date of delivery or Instalment (or if no such dates were agreed, within a reasonable period of time), subject to clause 11 (which will mutatis mutandis apply to such new delivery or Instalment date).
- 16.10. If Harsco Infrastructure postpones -
- 16.10.1. the delivery of the Equipment -
- 16.10.1.1. in terms of clause 13.3, or
- 16.10.1.2. in its reasonable opinion it is not safe to do so owing to inclement weather conditions; the provisions of clauses 16.8 and 16.9 will mutatis mutandis apply; and
- 16.10.2. the return of the Equipment in terms of clause 13.3, the Hirer shall be liable to Harsco Infrastructure for all costs, expenses and losses incurred by Harsco Infrastructure as a result of the postponement.
- 17. Adjustments and repairs**
- 17.1. Only Harsco Infrastructure (or a contractor authorised by Harsco Infrastructure in writing) may make any adjustment or repair to the Equipment.
- 17.2. Harsco Infrastructure shall where possible carry out any adjustment or repairs to the Equipment on the Site. Where this is not possible, Harsco Infrastructure may remove the Equipment (or any part) from the Site and -
- 17.2.1. return it once it has been adjusted or repaired; or
- 17.2.2. replace the Equipment (or any part) with substitute equipment. In such event, the substitute equipment will for all purposes be regarded as the Equipment required to be delivered in terms of the Contract.
- 17.3. Harsco Infrastructure shall be liable for the costs of any adjustment or repair to Equipment where the adjustment or repair is required solely as a result of -
- 17.3.1. a defect in the Equipment of which Harsco Infrastructure has been given notice under clause 11.6;
- 17.3.2. a defect in the Equipment which existed at the time of delivery and which was not apparent on a reasonable inspection of the Equipment at the time of delivery or Installation (as the case may be); or
- 17.3.3. fair wear and tear.
- 17.4. Except only in the circumstances set out in 17.3, the Hirer shall from the Delivery Date until the Risk Termination Date be liable for the cost of any adjustment, repair (including the loading, transport and unloading of any Equipment removed from the Site, any Equipment or replacement equipment returned to the Site), damage or misuse to the Equipment.
- 17.5. Any date quoted or agreed for the adjustment or repair of the Equipment is approximate only.
- 17.6. Harsco Infrastructure will not be liable for and the Hirer shall not be entitled to any rebate, discount or reduction in the Charges in respect of -
- 17.6.1. any loss or damage suffered or expense or cost incurred by the Hirer (including any loss or damage suffered or expense or cost incurred as a result of Harsco Infrastructure's negligence) arising out of or in connection with any delay by Harsco Infrastructure in adjusting or repairing the Equipment (or supplying substitute equipment); and
- 17.6.2. any period that the Hirer is unable to use the Equipment as a result of any adjustment or repair to the Equipment.
- 17.7. Time for the adjustment or repair of the Equipment (or supplying substitute equipment) is not of the essence of the Contract.
- 17.8. If Harsco Infrastructure fails to adjust or repair the Equipment for any reason (other than as a result of the Hirer's fault) and Harsco Infrastructure is liable to the Hirer, Harsco Infrastructure's liability will be limited to the lesser of -
- 17.8.1. the aggregate Charges (of the Equipment not adjusted or repaired) that would be payable by the Hirer during that portion of the Hire Period that the Hirer was unable to use the Equipment;
- 17.8.2. 5% of the aggregate Charges (not repaired and/or adjusted) that would be payable by the Hirer during the Hire Period (assuming that any notice required in terms of clause 6.2.2 to terminate the hire of the Equipment was given at the earliest opportunity; and
- 17.8.3. £100,000.
- 17.9. Subject to clause 17.8, the Hirer shall indemnify Harsco Infrastructure, its employees, agents and subcontractors against all loss, damages, costs and expenses awarded against, incurred, paid or agreed to be paid by Harsco Infrastructure, its employees, agents and subcontractors (or any of them) in respect of any claim which arises out of or is in connection with the Equipment being in a state of disrepair or a Total Loss.
- 18. Total Loss**
- 18.1. If the Equipment is lost (whether by theft, confiscation or otherwise), destroyed or damaged (in Harsco Infrastructure's opinion) beyond economic repair ("Total Loss"), Harsco Infrastructure shall, within 21 days of being advised in writing of the loss by the Hirer, notify the Hirer in writing as to whether or not the hire of the Equipment is to terminate.
- 18.2. If it fails to give the necessary notice under clause 18.1, Harsco Infrastructure will be deemed to have elected to terminate the hire of the Equipment.
- 18.3. If the hire of the Equipment is terminated in terms of clause 18.1 (read with clause 18.2), the Hirer shall be liable for and pay to Harsco Infrastructure -
- 18.3.1. the Charges on the Equipment lost up to the date the hire is terminated;
- 18.3.2. the new replacement value of the Equipment lost; and
- 18.3.3. an amount equal to the Charges applicable to the lost Equipment from the date that the hire terminated to the date the amount referred to in clause 18.3.2 is paid in full.
- 18.4. If the hire of the Equipment is to continue in terms of clause 18.1 -
- 18.4.1. Harsco Infrastructure shall within 28 days of notifying the Hirer that the hire is to continue, deliver substitute equipment to the Hirer. The substitute equipment will for all purposes be regarded as the Equipment required to be delivered in terms of the Contract;
- 18.4.2. the Hirer shall be liable for and continue to pay to Harsco Infrastructure -
- 18.4.2.1. all charges and amounts (including Charges) payable by it in terms of the Contract as if the Total Loss had not occurred;
- 18.4.2.2. the new replacement value of the Equipment lost;
- 18.4.2.3. an amount equal to the charges applicable to the lost Equipment from the date of the replacement equipment is delivered to the date the amount referred to in clause 18.4.2.2 is paid in full; and
- 18.4.2.4. Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in relation to any of the matters referred to in clauses 12, 13, 14, and 15 and undertaken by Harsco Infrastructure in relation to the substitute equipment.
- 18.4.3. Subject to clause 18.4.2.4, clauses 11, 14, 15, 16.8 and 16.9 will mutatis mutandis apply to the substitute equipment to be delivered in terms of this clause.

- 19. Insurance**
- 19.1. The Hirer shall (at its cost) insure –
- 19.1.1. the Equipment from the Delivery Date against any loss of or damage for the full new replacement value of the Equipment with an insurance company acceptable to Harsco Infrastructure and keep it so insured until the Risk Termination Date ("the Property Policy"); and
- 19.1.2. Harsco Infrastructure and the Hirer from the Delivery Date against any liability to third parties arising out of or in connection with the use or possession of the Equipment for at least £5m with an insurance company acceptable to Harsco Infrastructure and keep Harsco Infrastructure and the Hirer so insured until the Risk Termination Date ("the Public Liability Policy").
- 19.2. Each of the Property Policy and Public Liability Policy must –
- 19.2.1. not have an excess greater than £1,000.00;
- 19.2.2. not be capable of being cancelled by the insurer other than on at least 14 days written notice to Harsco Infrastructure; and
- 19.2.3. be on the basis that the insurer waives any breach by the Hirer of the policy as against Harsco Infrastructure.
- 19.3. The Property Policy must further –
- 19.3.1. name Harsco Infrastructure as a named insured for their interest in the Equipment;
- 19.3.2. note Harsco Infrastructure's interest in the Equipment; and
- 19.3.3. name Harsco Infrastructure as the sole loss payee in relation to the Equipment.
- 19.4. The Public Liability Policy must further contain a principles indemnity clause in favour of Harsco Infrastructure.
- 19.5. The Hirer shall on request produce to Harsco Infrastructure (and allow Harsco Infrastructure to make copies) of the Property Policy and the Public Liability Policy and the receipt for the current year's premium in respect of each policy.
- 19.6. If the Equipment is lost or damaged, the Hirer shall make or assist in the making of any appropriate claim under the Property Policy as Harsco Infrastructure may require.
- 19.7. The Hirer shall not in any way settle or compromise any claim made under the Property Policy in relation to the Equipment without the prior written consent of the Harsco Infrastructure.
- 19.8. Harsco Infrastructure may appropriate any amounts received by it under the Property Policy in or towards the satisfaction of any amounts due by the Hirer to Harsco Infrastructure (whether in terms of the Contract or on any account) and account to the Hirer for the balance.
- 19.9. If the Hirer fails to take out the insurance as referred to in clause 19.1 or at the request of Harsco Infrastructure, fails to provide proof of payment of the current years premium, Harsco Infrastructure may take out the necessary insurance and recover the costs of so doing from the Hirer.
- 20. Property in the Equipment**
- 20.1. Harsco Infrastructure shall at all times remain the owner of the Equipment and the Hirer shall have no right, title or interest in the Equipment otherwise than as Hirer.
- 20.2. The Hirer shall not do or permit anything to be done which may prejudice or endanger Harsco Infrastructure's property or rights in the Equipment.
- 20.3. The Hirer shall ensure that the owner, landlord or superior licensee of the Site (if not the Hirer) and any contractor or sub-contractor of the Hirer involved in the purpose for which the Equipment has been hired is aware that the Equipment is the property of Harsco Infrastructure.
- 21. Default of the Hirer**
- 21.1. A "Default Event" will occur if any one or more of the following events occur –
- 21.1.1. the Hirer fails to pay any amount due to Harsco Infrastructure in terms of the Contract on its due date or breaches any other provision of the Contract;
- 21.1.2. the Hirer fails to pay any amount due to Harsco Infrastructure in terms of any other contract between Harsco Infrastructure and the Hirer on its due date or breaches any other provision of any other contract between Harsco Infrastructure and the Hirer;
- 21.1.3. the Hirer makes or threatens to make any voluntary arrangement with its creditors or becomes subject to any administration order or (being a company) goes into liquidation or (being an individual or firm) becomes bankrupt; an encumbrancer takes possession, or a receiver, administrative receiver or administrator or any similar official is appointed in respect of the whole or any part of the assets of the Hirer;
- 21.1.4. any distress or execution is levied on the Hirer's property or assets;
- 21.1.5. anything analogous to any of the events specified in clauses 21.1.3 to 21.1.5 occurs under the laws of any applicable jurisdiction;
- 21.1.7. the Hirer ceases, or threatens to cease, to carry on business;
- 21.1.8. the Hirer abandons the Equipment or allows the Equipment to be seized under any legal proceedings issued against it;
- 21.1.9. Harsco Infrastructure (its employees, agents, or contractors) cease to enjoy lawful access to the Site;
- 21.1.10. Harsco Infrastructure reasonably apprehends that any of the events set out in 21.1.1 to 21.1.9 is about to occur; or
- 21.1.11. any event set out in clauses 21.1.2 to 21.1.7 occurs in relation to any holding company of the Hirer or any subsidiary of any such holding company.
- 21.2. If a Default Event occurs, Harsco Infrastructure may, without incurring any liability to the Hirer, take any one or more of the following actions -
- 21.2.1. suspend delivery (or further deliveries) of the Equipment to the Hirer under the Contract (and/or the delivery of any other equipment or goods under any other contract between Harsco Infrastructure and the Hirer);
- 21.2.2. terminate the Contract and uninstall and recover the Equipment from the Hirer;
- 21.2.3. declare all amounts due by the Hirer to Harsco Infrastructure in terms of the Contract (which includes the Charges that would be payable during the unexpired term of the Hire Period) (and any other contracts between Harsco Infrastructure and the Hirer) to be immediately due and payable; and
- 21.2.4. charge the Hirer interest on any amount unpaid in terms of the Contract (both before and after any judgment) –
- 21.2.4.1. calculated on a daily basis (and compounded monthly in arrear on the last day of each month) from its due date until it is paid in full at 4% per annum above the base rate from time to time of National Westminster Bank; or
- 21.2.4.2. (at Harsco Infrastructure's discretion) under the Late Payment of Commercial Debts (Interest) Act 1998.
- 21.3. Termination of the Contract for whatever reason will not affect and will be without prejudice to –
- 21.3.1. any rights which have accrued or any rights arising out of any breach giving rise to the termination; and
- 21.3.2. any provision which is expressly or by implication to operate after the termination of the Contract.
- 21.4. The provisions of clauses 13.4, 16.2, 17.9 and 21.5 will survive the termination of the Contract.
- 21.5. The Hirer shall indemnify Harsco Infrastructure, its employees, agents and subcontractors (or any of them) against all loss, damages, costs and expenses (including any penalties and fines in the case of clause 21.5.1) incurred, paid or agreed to be paid by Harsco Infrastructure, its employees, agents and subcontractors (or any of them) –
- 21.5.1. arising out of or in connection with any breach by the Hirer of any of its obligations in terms of the Contract; and
- 21.5.2. in enforcing any of its rights in terms of the Contract as against the Hirer.
- 21.6. If the Hirer fails to comply with any provision of the Contract, Harsco Infrastructure may (but without there being any obligation on Harsco Infrastructure to do so) comply with such provision on behalf of the Hirer and on demand recover the costs and expenses of doing so from the Hirer.
- 21.7. Without in any way –
- 21.7.1. limiting any of Harsco Infrastructure's rights in terms of the Contract, in law or equity; or
- 21.7.2. conferring any right on the Hirer to the continued use or possession of the Equipment, if the Hirer does not return the Equipment to Harsco Infrastructure on the Hire Termination Date or termination of the Contract (as the case may be), the Hirer shall until the return of the Equipment and as recompense for the continued use of the Equipment, be liable to Harsco Infrastructure in respect of each relevant periodic period (or part) for an amount equal to the Charges.
- 21.7.3. If it is necessary for Harsco Infrastructure to recover its Equipment, the Hirer shall be liable to pay Harsco Infrastructure's charges or the charges incurred by Harsco Infrastructure in –
- 21.7.3.1. disconnecting and removing any conducting media; and
- 21.7.3.2. making good any reasonably incurred damage in disconnecting or remove the Equipment from the Hirer's premises.
- 22. Limitation of liability**
- 22.1. A "Liability Event" means -
- 22.1.1. any breach by Harsco Infrastructure of any its obligations in terms of or arising out of the Contract;
- 22.1.2. any liability Harsco Infrastructure may have arising out of or in connection with the use of the Equipment; and
- 22.1.3. any act or omission (including any tortious or negligent act or omission or any breach of statutory duty) by Harsco Infrastructure or any of its employees, agents or contractors arising out of or in connection with the Contract and as a result of which the Hirer suffers loss or damage.
- 22.2. Subject to the provisions of clause 22.4 and 22.6 -
- 22.2.1. Harsco Infrastructure's liability to the Hirer in respect of a Liability Event will be limited to an amount equal to aggregate Charges payable by the Hirer during the Hire Period or £100,000, whichever is the lesser; and
- 22.2.2. Harsco Infrastructure shall not be liable to the Hirer in respect of a Liability Event for indirect or consequential (whether direct or indirect) loss or damage (including loss or damage suffered by Hirer as a result of an action brought by a third party, pure economic loss, wasted time or expenditure or loss of profit, revenue, production, business or goodwill).
- 22.3. If a number of Liability Events give rise to substantially the same loss, they will be regarded as having arisen from a single Liability Event and will accordingly only give rise to one claim under the Contract.
- 22.4. Clause 22.2.1 will not apply to a Liability Event to the extent that clause 11.3, 11.5, 17.6 or 17.8 applies to such Liability Event.
- 22.5. Subject to the provisions of clause 22.6, Harsco Infrastructure shall not be liable to the Hirer in respect of a Liability Event unless legal proceedings in respect the Liability Event are commenced by being both issued and served within 12 months of the event giving rise to the claim.
- 22.6. Nothing in the Terms excludes or limits the liability of Harsco Infrastructure for –
- 22.6.1. death or personal injury caused by Harsco Infrastructure's negligence;
- 22.6.2. any matter which it would be illegal for Harsco Infrastructure to exclude or limit or attempt to exclude or limit its liability; and
- 22.6.3. fraud or fraudulent misrepresentation.
- 23. Force majeure**
- Harsco Infrastructure will not be liable to the Hirer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in terms of the Contract, if the delay or failure was due to any cause beyond its reasonable control including any act of God, fire, flood, accident, strike, lock-out, or other industrial dispute or action (of its own or other employees), power failure, mechanical failure, delay in transportation, inability to obtain materials or supplies, act of government or state, requirement of any governmental or local authority, war, civil commotion, insurrection or embargo.
- 24. Consumers**
- 24.1. Where the Equipment is hired under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) or otherwise to a Consumer, the statutory rights of the Hirer are not affected by the Terms.
- 24.2. Furthermore, in relation to any Contract where the Hirer is a Consumer, the Terms will be varied to the extent necessary (but no more) for them to comply with any applicable consumer legislation and regulations.
- 24.3. Where the Hirer is a Consumer, notwithstanding anything to the contrary in the Contract, the maximum Hire Period (including any extensions or contract renewal) shall be three months.
- 25. Authorised Harsco Infrastructure persons**
- Where the Terms provide for certain matters to be agreed in writing between Harsco Infrastructure and the Hirer or Harsco Infrastructure providing its written consent or approval, the agreement, consent or approval will be of no effect unless it is signed on Harsco Infrastructure's behalf by a director of Harsco Infrastructure or an employee of Harsco Infrastructure holding the position of branch manager or above.
- 26. Notices**
- 26.1. Any notice required to be given by the Hirer to Harsco Infrastructure must be sent –
- 26.1.1. in the case of the Contract coming into existence on the acceptance by the Hirer of the Quotation and subject to clause 26.1.3, to Harsco Infrastructure's business address as set out in the Quotation; or
- 26.1.2. in the case of the Contract coming into existence on the acceptance by the Harsco Infrastructure of the Order and subject to clause 26.1.3, to Harsco Infrastructure, Harsco House, Regent Park, 299 Kingston Road, Leatherhead, Surrey, KT22 7SG; or
- 26.1.3. to such changed address as Harsco Infrastructure may notify to the Hirer in writing from time to time.
- 26.2. Any notice required to be given by Harsco Infrastructure to the Hirer may be sent –
- 26.2.1. in the case of the Contract coming into existence on the acceptance by the Hirer of the Quotation and subject to clause 26.2.3, to the address, facsimile number or email address of the Hirer as set out in the Quotation;
- 26.2.2. in the case of the Contract coming into existence on the acceptance by the Harsco Infrastructure of the Order and subject to clause 26.2.3, to the Hirer's address, facsimile number or email address as set out in the Order Confirmation; and
- 26.2.3. to such changed address in the United Kingdom, facsimile number or email address as the Hirer may notify to Harsco Infrastructure in writing from time to time.
- 26.3. A notice to the Hirer at its address, facsimile number or email address referred to in clause 26.2 will be deemed to have been received by the Hirer –
- 26.3.1. if delivered by hand, at the time of delivery;
- 26.3.2. if sent by pre-paid first class post, 2 Business Days after posting (exclusive of the day of posting);
- 26.3.3. if sent by facsimile, on Harsco Infrastructure receiving a successful transmission report;
- 26.3.4. if sent by email, at the time of sending.
- 26.4. A notice actually received by the Hirer will be regarded as effective, notwithstanding that it was not sent to the Hirer at its address, facsimile number or email address referred to in clause 26.2.
- 27. Warranties excluded**
- Save as expressly provided in the Terms, all warranties, conditions or terms relating to fitness for purpose, quality or condition of the Equipment (whether express or implied by statute or common law or otherwise) are excluded to the fullest extent permitted by law.
- 28. Assignment**
- 28.1. The Hirer may not transfer, mortgage or charge any of its rights under the Contract without Harsco Infrastructure's prior written consent.
- 28.2. Harsco Infrastructure may on notice to the Hirer transfer any or all of its rights or obligations under the Contract to any other person.
- 28.3. Harsco Infrastructure may sub-contract any of its obligations under the Contract.
- 29. Third Party Rights**
- 29.1. Subject to clause 29.2, a person who is not a party to the Contract will not acquire any rights under the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 29.2. A person who is not a party to the Contract but who is expressly indemnified in terms of the Contract may rely on and enforce the indemnity.
- 30. Rights Cumulative**
- Each right or remedy of Harsco Infrastructure under the Contract is without prejudice to any other right or remedy of Harsco Infrastructure whether under the Contract or in law or equity.
- 31. Waiver**
- The failure or delay by Harsco Infrastructure to exercise any of its rights under the Contract will not operate as a waiver or variation of that or any other right and any defective or partial exercise of any right will not preclude Harsco Infrastructure from exercising that or any other right.
- 32. Severability**
- If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision concerned will not be affected.
- 33. Proper Law**
- The Contract will be governed by the laws of England and the Hirer agrees to submit to the non-exclusive jurisdiction of the English courts.