

## 1. DEFINITIONS

In these Terms of Hire the following meanings shall apply:  
"We" and "Us" means Harsco Infrastructure and Our shall be interpreted accordingly.  
"You" means the person their employees or agents seeking to hire Equipment from Us and Your shall be interpreted accordingly.  
"the Equipment" means the equipment, pallets, stillages, returnable containers and/or the services to be supplied by Us.  
"Company Signatory" means a Manager employed by Us.  
"the Terms" means these terms and any special terms agreed in writing between a Company Signatory and You.  
"Consumer" means any natural person acting for purposes outside their trade, business or professional or as defined by their Unfair Contract Terms Act 1977.  
"Hire period" means the time from the date agreed for the start of the hire or Despatch (whichever is the earlier) until the Equipment is Returned.  
"Working Day" means any day on which We are open for business.  
"Despatch" means the transfer of possession of Equipment to You whether collected by You or delivered by Us and Despatched shall be interpreted accordingly.  
"Return" means the re-transfer of possession of the Equipment to Us in a Satisfactory Condition whether delivered by You to the branch from which it was hired or collected by Us and Returned shall be interpreted accordingly.  
"Satisfactory Condition" means clean undamaged and unaltered as determined in Our sole discretion.

SAFETY INFORMATION ABOUT THE USE OF THE EQUIPMENT IS PROVIDED AND IT IS YOUR RESPONSIBILITY TO BRING THIS TO THE ATTENTION OF THE USER OF THE EQUIPMENT.

## 2. THE CONTRACT

- 2.1 All orders are accepted by Us only under these Terms which may not be altered except with the written agreement of a Company Signatory. Any contrary or additional terms unless so agreed are excluded. Written quotations are open for 28 days.
- 2.2 Orders may be cancelled only with the written agreement of a Company Signatory and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation.
- 2.3 If You are not a limited company the contract including any amendment or variation to it will end within 3 months of the start of the Hire Period. The Equipment must be Returned to Us at latest the day before the expiry of the 3 month period and You will indemnify Us against all losses damages costs and expenses We incur if You fail to so Return the Equipment.
- 2.4 We shall not be liable for any misrepresentation made by Us Our employees or agents to You as to the condition of the Equipment its fitness for any purpose or as to quantity or measurements unless the representation is made or confirmed in writing by a Company Signatory and/or is fraudulent. Our brochures and other literature are for Your guidance only and (in the absence of fraud on Our part) shall not constitute representations by Us.

## 3. HIRE CHARGES & HIRE PERIOD

- 3.1 Hire Charges are payable during the Hire Period.
- 3.2 The Hire Charges are as stated or quoted are exclusive of VAT and are subject to change on 28 days written notice both before or during the Hire Period. Any discounts deductions or rebates agreed are only available if the Hire Charges are paid on the due date.
- 3.3 Hire Charges stated or quoted are applicable to the quantity, specification, delivery dates, length of Hire and information provided by you. If the order placed varies or delay is caused by Your instruction or lack of instructions We shall be entitled to adjust the Hire Charges. Additional charges will be made for the supply of accessories, extras or additions.
- 3.4 Hire charges stated at weekly rates accrue daily (including the day of Despatch and Return, Bank and Public Holidays) each day or part day accruing at 1/5 of the weekly charge. No allowance is given if the Equipment is not used even if this is outside Your control.
- 3.5 Minimum Hire Periods apply as stated or quoted and no refund or credit is given if the Hire terminates early for whatever reason.
- 3.6 If You subsequently purchase the Equipment no credit will be given for Hire Charges which have already accrued and further Hire Charges shall continue to accrue until You have paid to Us the agreed purchase price.

## 4. PAYMENT

- 4.1 If We have agreed in writing to give You credit all accounts are due for payment 30 days after the date of Our invoices which will be issued at regular intervals during the Hire Period.
- 4.2 If credit has not been agreed You shall pay Us before the hire commences the Minimum Hire Charge and Deposit as notified to You. If the hire continues after the Minimum Hire Period invoices will be issued monthly and are payable on receipt. The Deposit will be returned to You when We are satisfied You have no further liability to Us whether actual or contingent.
- 4.3 Credit is granted and may be reviewed at any time at Our discretion. We reserve the right to refuse to execute any order or contract if the arrangements for payment or Your credit rating is not satisfactory to Us. You may not withhold payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim which You may have or allege to have for any reason.

## 5. DESPATCH OF EQUIPMENT

- 5.1 Despatch dates and/or times are given by Us in good faith but are estimates only. Time of Despatch and/or Return shall not be of the essence of the contract.
- 5.2 We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay by Us in Despatch and/or Return of the Equipment or failure to deliver the Equipment in a reasonable time whether such delay or failure is caused by Our negligence or otherwise howsoever.
- 5.3 You must provide the necessary labour for unloading and loading the Equipment during Despatch and/or Return. Transport charges will be made if We undertake Despatch or Return. If We provide the labour for loading or unloading, if our vehicle is kept waiting for any unreasonable time or is obliged to return without completing the Despatch or Return.
- 5.4 We reserve the right to refuse to deliver the Equipment if the driver considers that delivery cannot be effected safely at the delivery address.
- 5.5 You will indemnify Us in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such losses damage costs or expenses are due to Our negligence.

## 6. INSPECTION

- 6.1 At the time of Despatch You shall inspect the Equipment and unless You advise Us by telephone immediately and written notice is received by Us within 3 Working Days of Despatch of any claim for short delivery or failure to conform with the contract apparent on inspection the Equipment will be deemed to have been Despatched in accordance with the delivery documents.
- 6.2 Our liability for short delivery or failure of the apparent on inspection is limited to supplying the Equipment as ordered. We shall not be liable for any damages whatsoever for short delivery or failure of the Equipment to conform to the Contract which is apparent on inspection howsoever caused. You remain liable to pay the full Hire Charge for Equipment delivered or available for delivery in accordance with the Contract. Any other claims for damages is subject to Clause 10.

## 7. RETURN

- 7.1 HIRE CHARGES CONTINUE AND THE EQUIPMENT REMAINS YOUR RESPONSIBILITY UNTIL THE EQUIPMENT IS RETURNED.
- 7.2 We require a minimum of 1 (2 in the week before Easter and Christmas Bank Holidays) Working Days notice before the Equipment is Returned. On receipt of that notice You will be provided with an Off-Hire Number but Hire Charges continue until the Equipment is Returned.
- 7.3 If the Equipment is to be collected by Us and is dismantled, ready for loading and in a Satisfactory Condition when We attend to collect it Hire Charges will cease on expiry of the notice given by You under Clause 7.2 above. IT IS YOUR RESPONSIBILITY TO DISMANTLE STACK AND LOAD THE EQUIPMENT. THE EQUIPMENT REMAINS YOUR RESPONSIBILITY UNTIL ACTUAL COLLECTION OCCURS.
- 7.4 We will count the Equipment on its Return to verify quantity and issue a Hire Return Ticket. You may attend this count. Unless We receive written notice of any dispute within 3 Working Days of Your receipt of the Hire Return Ticket the Equipment will be deemed returned to Us in the quantities shown. The count is not an inspection of the condition of the Equipment.

## 8. HIRER'S RESPONSIBILITIES

- 8.1 During the Hire Period YOU WILL NOT without the written consent of a Company Signatory remove the Equipment from the site to which it was delivered or sublet or part with possession of any of the Equipment. If We agree to Your subletting of the Equipment You are deemed to retain possession and control of the Equipment and remain liable to Us under the Terms of this Contract.
- 8.2 During the Hire Period YOU WILL NOT repair alter or modify the Equipment or interfere with Our identification marker on the Equipment or any of Our signage attached to the Equipment.
- 8.3 Your failure to comply with all or any of Your responsibilities set out in this Clause will amount to a material breach of this contract under Clause 11.3.

## 9. LOST STOLEN OR DAMAGED EQUIPMENT

- 9.1 If the Equipment is not Returned in a Satisfactory Condition You will pay Us the cost of cleaning repairing and/or rectification ("the Repair Charge"). If the Equipment is lost stolen or in Our sole opinion is damaged beyond repair You shall pay Us Our current sale price of the Equipment ("the sale price"). We shall give You 7 Working Days written notice before starting any repairs to allow for inspection and Your comments. The decision to undertake repairs is at Our sole discretion.
- 9.2 Hire Charges shall continue until the Repair Charge or the Sale Price (as appropriate) has been paid.
- 9.3 You shall insure against the risk of the Equipment being damaged stolen or lost during the Hire Period.

## 10. LIABILITIES

- 10.1 In this Clause "the Defect" shall mean the condition and/or any attribute of the Equipment and/or any other circumstances which but for the effect of these Terms would have entitled You to damages.
- 10.2 Nothing in these Terms shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or Our liability for fraudulent misrepresentation.
- 10.3 If You deal as a Consumer any provision of these Terms which is of no effect shall not apply. The Statutory rights of a Consumer are not affected by these Terms.
- 10.4 Subject to Clause 10.2 and 10.3 of these Terms We shall not be liable by reason of any contract tort (including negligence or breach or statutory duty) or otherwise howsoever and whatever the cause for any damages whatsoever. Instead of liability in damages We undertake liability under Clause 10.5 below.
- 10.5 Where but for the effect of Clause 10.4 of these Terms You would have been entitled to damages against Us We shall not be liable to pay damages but subject to the conditions set out in Clause 10.6 below shall in Our sole discretion either repair the Equipment at our own expense or supply replacement Equipment free of charge or refund all (or where appropriate part) of the Hire Charges paid for the relevant Equipment.
- 10.6 We will not be liable under Clause 10.5
  - (a) if the Defect arises from fair wear and tear
  - (b) if the Defect arises from Your negligence willful damage mis use alteration or repair of the Equipment or abnormal working conditions.
  - (c) unless You advise Us by telephone immediately and written notice is received by Us within 3 Working Days of discovery of the Defect.
- 10.7 If the Equipment is supplied to a drawing design quantity measurement or specification provided by You then subject to Clauses 10.2 and 10.3 of these Terms We shall not be under any liability for damages whatsoever or under Clause 10.5 of these Terms except in the event of:
  - (a) misrepresentation where the representation is made or confirmed in writing by a Company Signatory and/or is fraudulent.
  - (b) non compliance with such drawing design quantity measurement or specification
  - (c) breach of a written warranty signed by a Company Signatory that the goods are fit for that purpose.
- 10.8 If the Equipment is supplied to a drawing design measurement or specification provided in writing by Us then subject to Clause 10.2 and 10.3 of these Terms We shall not be under any liability for damages whatsoever or under Clause 10.5 of these Terms except in the proportion and to the extent that such damages have resulted primarily from Our breach or negligence.
- 10.9 We will not be liable under Clause 10.8 if:
  - (a) material information is withheld concealed or misrepresented by You and/or
  - (b) the design measurement or specification provided by Us is not in writing.
- 10.10 Subject to Clause 10.2 and 10.3 We shall not be liable for misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof
  - (a) for any loss of profit, business, contracts, revenues or anticipated savings, or
  - (b) for any special, indirect or consequential damage of any nature whatsoever
- 10.11 Except when You deal as a Consumer You will unconditionally fully and effectively indemnify Us against all losses damages penalties costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Equipment. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to Our negligence. You shall insure against this risk.
- 10.12 Without prejudice to any other provisions to these Terms in any event Our total liability for any one claim or for the total of all claims arising from any one act of default on Our part (whether arising from our negligence or otherwise) shall not exceed the Hire Charges relating to the Equipment the subject matter of any claim.

## 11. NON-PAYMENT/INSOLVENCY

- 11.1 "Insolvent" means You ceasing to pay Your debt in the ordinary course of the business or being unable to pay Your debts as they become due or You ceasing or threatening to carry on Your business.
- 11.2 "Associated Company" means Your subsidiary or holding company as defined in Section 736 and Section 736a of the Companies Act 1985 or a subsidiary of such a holding company, or any company over which Your directors or shareholders have control as defined in section 840 of the Income and Corporation Taxes Act 1988.
- 11.3 If You fail to pay any invoice or any sum due to Us under any contract on the due date or Your credit limit is exceeded or You or Your Associated Company becomes insolvent or there is a material change in Your or Your Associated Company's constitution or You commit a material breach of this contract and fail to remedy that breach after being requested to do so all sums outstanding between You and Us under this and any other contract shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have)
  - (a) require payment in cleared funds in advance of further Despatches
  - (b) charge interest on the monies outstanding at the rate of 4 per cent above Lloyds Bank Plc's base rate in force from time to time from the due date until date of payment after as well as before judgement
  - (c) withdraw Your right to quiet possession of the Equipment and any implied license and authority You may have to use the Equipment
  - (d) cancel or suspend any further Despatches to You Under any contract without liability on Our part
  - (e) terminate this or any other contract with You without liability on Our part
  - (f) recover all or any of the Equipment and for that purpose We may wish such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Equipment may be or is believed to be situated.
- 11.4 Except when You deal as a Consumer You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under this contract including but not limited to recover of any sums due.

## 12. GENERAL

- 12.1 This contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non exclusive jurisdiction of the English Courts.
- 12.2 Any references in these Terms to any statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended extended or re-enacted.
- 12.3 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 12.4 If You comprise two or more parties Your liability under this contract shall be joint and several.
- 12.5 Except as provided otherwise in these Terms We shall not be liable for any delays or failures to perform any of Our obligations under this contract due to any cause beyond Our reasonable control including industrial action.
- 12.6 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 12.7 If any clause or sub clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub clauses of these Terms shall not be affected and they shall remain in full force and effect.
- 12.8 If the Housing Grants Construction & Regeneration Act 1996 Part II applies to this contract the Scheme under that Act shall apply and take precedence in the event of conflict between the Scheme and these Terms.
- 12.9 This contract is personal to You and may not be assigned.
- 12.10 Termination of this contract shall not affect rights and obligations which have already accrued at the time of termination.

## A HARSCO COMPANY

Harsco Infrastructure Services Limited. Registered in England No. 276562. Registered Office: Harsco House, Regent Park, Kingston Road, Leatherhead, Surrey KT22 7SG