



## TERMS AND CONDITIONS

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 12 (LIMITATION OF LIABILITY).

### 1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Conditions.

- "ATI"** means ATI Tank Hire Limited incorporated and registered in England and Wales with company number 01766265 whose registered office is at Thamesfield Way, Pasteur Road, Great Yarmouth, Norfolk NR31 0DN.
- "Business Day"** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- "Client"** the person, firm or company specified in the Hire Contract who is to hire Equipment from ATI.
- "Contents"** the substance or material which is to be stored using the Equipment during the Hire Period, as set out in the Hire Contract or as otherwise agreed in writing by ATI.
- "Contract"** the contract between ATI and the Client for the hire of Equipment in accordance with the Hire Contract and these Conditions.
- "Control"** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **"change of control"** shall be construed accordingly.
- "Demobilisation"** shall mean:
- (a) the collection of the Equipment by ATI from the location specified in the Hire Contract (or such other location as may be agreed between the parties in writing) and the return of the Equipment to ATI's premises; or
  - (b) the delivery of the Equipment by the Client to ATI's premises,
- and **"Demobilise"** and **"Demobilised"** shall be construed accordingly.
- "Equipment"** the items of equipment listed in the Hire Contract, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

<b>"Fees"</b>	the fees payable by the Client in connection with the Contract, including but not limited to the Hire Rate, the costs of Mobilisation and Demobilisation, and any loading or unloading charges.
<b>"Hire Contract"</b>	the document provided by ATI to the Client and titled "Hire Contract".
<b>"Hire Period"</b>	the period for the hire of the Equipment by the Client as set out in clause 3.
<b>"Hire Rate"</b>	the fees payable by the Client to ATI for the hire of the Equipment, as set out in the Hire Contract.
<b>"Minimum Hire Period"</b>	shall mean 21 days from commencement of the Hire Period as set out in clause 3.1.
<b>"Mobilisation"</b>	shall mean:  (a) the delivery of the Equipment by ATI to the location specified in the Hire Contract (or such other location as may be agreed between the parties in writing); or  (b) the collection of the Equipment by the Client from ATI's premises,  and " <b>Mobilise</b> " and " <b>Mobilised</b> " shall be construed accordingly.
<b>"Mobilisation Date"</b>	such date as is agreed between ATI and the Client for the commencement of Mobilisation.
<b>"Risk Period"</b>	the period during which the Equipment is at the sole of the risk of the Client as set out in clause 8.2.
<b>"Site"</b>	the location at which the Equipment shall be used by the Client as may be agreed between the parties from time to time.
<b>"Standby Rate"</b>	a discounted hire rate.
<b>"VAT"</b>	value added tax chargeable in the UK.

1.2 Clause headings shall not affect the interpretation of these Conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular and a reference to one gender includes a reference to the other genders.

- 1.6 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that legislation or legislative provisions.
- 1.7 A reference to **writing** or **written** excludes fax but not email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 References to clauses are to the clauses of these Conditions.
- 1.10 Any words following the terms including, **include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## **2. BASIS OF CONTRACT**

- 2.1 The Contract shall comprise of the Hire Contract and these Conditions. If there is any conflict or ambiguity, unless otherwise expressly stated, the order of precedence shall be:
  - 2.1.1 the Hire Contract;
  - 2.1.2 these Conditions;to the extent of such conflict or ambiguity.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.3 The Contract shall come into force on the earlier of:
  - 2.3.1 the date on which the Hire Contract has been signed by the Client; or
  - 2.3.2 the Mobilisation Date; or
  - 2.3.3 the date on which a Standby Rate begins.
- 2.4 A quotation for the hire of the Equipment and/or the sale of the Equipment given by ATI shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

## **3. HIRE PERIOD**

- 3.1 The Hire Period shall commence on the Mobilisation Date and shall end on completion of Demobilisation.
- 3.2 Hire charges shall apply for every day within that period, including Saturdays, Sundays, bank holidays and public holidays.
- 3.3 the Hire Period specified in the Hire Contract shall be an estimate only, and the Hire Period shall (unless terminated earlier in accordance with clause 13) continue on an ongoing basis, unless and until terminated by either party giving to the other not less than one week's notice in writing to terminate the Hire Period.

#### **4. EQUIPMENT HIRE**

- 4.1 ATI shall hire the Equipment to the Client for use at the Site subject to the terms of the Contract.
- 4.2 ATI shall not, other than in the exercise of its rights under these Conditions or applicable law, interfere with the Client's quiet possession of the Equipment.
- 4.3 The Client shall be responsible for ensuring that the Equipment is suitable for the Client's requirements and ATI makes no warranty or representation as to the suitability of the Equipment (or the quantity of the Equipment) for the Client's requirements.
- 4.4 Where the Client requires modifications or additional fittings for the Equipment such changes must be notified to ATI before the Mobilisation Date and included in the Contract. Additional transport costs shall be charged for any changes made after the Mobilisation Date.

#### **5. FEES**

- 5.1 The Fees shall be as set out in the Hire Contract and are calculated on the following basis:
  - 5.1.1 the Fees for the hire of the Equipment during the Hire Period shall be calculated in accordance with the Hire Rate (subject to any increase in accordance with clause 5.4);
  - 5.1.2 any Fees for Mobilisation and Demobilisation shall, subject to clause 5.6, be at the rates set out in the Hire Contract;
  - 5.1.3 any Fees for the loading or unloading of the Equipment shall be calculated in accordance with the Hire Contract; and
  - 5.1.4 ATI shall be entitled to charge the Client for any expenses reasonably incurred in connection with the Equipment in accordance with these Conditions or otherwise.
- 5.2 Where the Contract is terminated by the Client in accordance with clause 3.3 either:
  - 5.2.1 before the commencement of the Hire Period; or
  - 5.2.2 after the commencement of the Hire Period, but before the end of the Minimum Hire Period,

the Fees for the hire of the Equipment under clause 5.1.1 shall be calculated on the basis of the Minimum Hire Period, alongside any other Fees payable in accordance with clause 5.1.
- 5.3 Where the Contract specifies that the Hire Rate is discounted to reflect a specified Hire Period and the Client terminates that Hire Period early the Hire Rate will revert to the full undiscounted rate (where set out in the Contract) for the full Hire Period.
- 5.4 ATI may increase the Hire Rate at any time during the Hire Period on giving 14 days' written notice to the Client.
- 5.5 The Fees for Mobilisation and Demobilisation set out in the Hire Contract are based on Mobilisation and Demobilisation taking place on a Business Day, between the

hours of 8am and 4.45pm, and allowing for a maximum of two hours for loading and unloading. If Mobilisation or Demobilisation takes place outside of the hours specified in this clause, or loading and unloading takes more time than allowed for, additional charges shall apply.

- 5.6 ATI reserves the right to increase the Mobilisation and Demobilisation costs set out in the Hire Contract by giving notice in writing to the Client at any time prior to commencement of Mobilisation or Demobilisation (as the case may be) to reflect any reasonable and evidenced increase in the cost of Mobilisation and/or Demobilisation to ATI that is due to:
- 5.6.1 any factor beyond the control of ATI (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, fuel, materials and other service costs);
  - 5.6.2 any request by the Client to change the dates on which Mobilisation or Demobilisation are carried out;
  - 5.6.3 any request by the Client to change the location for Mobilisation or Demobilisation from that which is set out in the Hire Contract;
  - 5.6.4 any request by the Client for the Equipment to be Mobilised or Demobilised in instalments; or
  - 5.6.5 any delay caused by any instructions of the Client in respect of Mobilisation or Demobilisation or failure of the Client to give ATI adequate or accurate information or instructions in respect of Mobilisation or Demobilisation.
- 5.7 Unless otherwise specified in the Hire Contract or agreed between the parties in writing, ATI shall invoice the Client for the Fees monthly in arrears.
- 5.8 Unless otherwise agreed between the parties in writing, the Client shall pay each invoice submitted by ATI:
- 5.8.1 within 30 days of the date of the invoice; and
  - 5.8.2 in full and in cleared funds to a bank account nominated in writing by ATI, and time for payment shall be of the essence of the Contract.
- 5.9 The Fees are exclusive of VAT and any other applicable taxes and duties (including export or import duties) or similar charges which shall be payable by the Client at the rate and in the manner from time to time prescribed by law. Where any taxable supply for VAT purposes is made under the Contract by ATI to the Client, the Client shall, on receipt of a valid VAT invoice from ATI, pay to ATI such additional amounts in respect of VAT.
- 5.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.11 If the Client fails to make a payment due to ATI under the Contract by the due date, then, without limiting ATI's remedies under clause 13, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 6% a year above the Bank of England's base rate from time to time, but at 6% a year for any period when that base rate is below 0%.

## **6. MOBILISATION OF EQUIPMENT**

- 6.1 Unless otherwise agreed between the parties in writing and set out in the Hire Contract, Mobilisation shall be carried out by ATI. ATI shall use all reasonable endeavours to effect Mobilisation on the Mobilisation Date but time for completion of Mobilisation is not of the essence.
- 6.2 Risk shall transfer in accordance with clause 8.2.
- 6.3 The Client shall procure that a duly authorised representative of the Client shall be present at the Mobilisation of the Equipment. Acceptance by such representative of Mobilisation shall constitute conclusive evidence that the Client has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by ATI, the Client's duly authorised representative shall sign a receipt confirming such acceptance.
- 6.4 To facilitate Mobilisation, the Client shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Mobilisation to be carried out safely and expeditiously.
- 6.5 Unless otherwise agreed in writing between the parties, the Client is responsible for installation and commissioning of the Equipment at the Site. Should installation and/or commissioning be carried out by ATI, an additional fee will be payable by the Client, such fee being set out in the Hire Contract (or otherwise agreed in writing between the parties).
- 6.6 If the Client fails to accept delivery of the Equipment in the course of Mobilisation, then, except where such failure is caused by ATI's failure to comply with its obligations under these Conditions:
- 6.6.1 the Equipment shall be deemed to have been delivered at 9.00 am on the date ATI attempted delivery; and
- 6.6.2 ATI shall store the Equipment until the Client takes possession of the Equipment, and charge the Client for all related costs and expenses (including handling, storage and insurance).
- 6.7 Unless otherwise agreed between the parties in writing, ATI shall under no circumstances effect Mobilisation to a location which is not in the United Kingdom.

## **7. DEMOBILISATION**

- 7.1 As soon as reasonably practicable upon expiry of a notice served by either party to end the Hire Period in accordance with clause 3.3 or clause 13, ATI shall effect Demobilisation of the Equipment (unless it is agreed in writing between the parties that the Client is to be responsible for Demobilisation).
- 7.2 To facilitate Demobilisation, the Client shall at its sole expense discharge its responsibilities under clause 9.4 and provide all requisite materials, facilities, access and suitable working conditions to enable Demobilisation to be carried out safely and expeditiously.
- 7.3 In the event that the Client is to use the Equipment at a Site which is not in the United Kingdom, the Client shall be responsible (at its own cost) for ensuring that the

Equipment is available to be collected by ATI from a location within the United Kingdom in order for ATI to effect Demobilisation.

## **8. TITLE, RISK AND INSURANCE**

8.1 The Equipment shall at all times remain the property of ATI, and the Client shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of the Contract).

8.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Client on completion of Mobilisation. The Equipment shall remain at the sole risk of the Client for the remainder of the Hire Period, and for any further term during which the Equipment is in the possession, custody or control of the Client, until Demobilisation has been completed (the "**Risk Period**").

8.3 During the Risk Period, the Client shall, at its own expense, obtain and maintain the following insurances:

8.3.1 insurance of the Equipment to a value not less than its full reinstatement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as ATI may from time to time nominate in writing;

8.3.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as ATI may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and

8.3.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as ATI may from time to time consider reasonably necessary and advise to the Client in writing.

8.4 All insurance policies procured by the Client shall be endorsed to provide ATI with at least 20 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on ATI's request name ATI on the policies as a loss payee in relation to any claim relating to the Equipment. The Client shall be responsible for paying any deductibles due on any claims under such insurance policies.

8.5 If the Client fails to effect or maintain any of the insurances required under these Conditions, ATI shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Client.

8.6 The Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to ATI and proof of premium payment to ATI to confirm the insurance arrangements.

8.7 The Client shall give immediate written notice to ATI in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Client's possession or use of the Equipment.

## **9. CLIENT'S RESPONSIBILITIES**

### **9.1 General**

The Client shall:

- 9.1.1 ensure that the terms of the Hire Contract are complete and accurate;
- 9.1.2 co-operate with ATI in all matters relating to the Equipment;
- 9.1.3 provide ATI with such information and materials as ATI may reasonably require in order to supply the Equipment, including but not limited to information regarding the Site and proposed location for Mobilisation and any obstacles or access issues that may reasonably be expected to inhibit Mobilisation, and ensure that such information is complete and accurate in all material respects; and
- 9.1.4 comply (at the Client's cost) with all applicable laws which apply to the Client's hire of the Equipment (including, without limitation, any applicable export and import regulations in the event the Equipment is used at a Site which is outside of the United Kingdom).

## 9.2 Mobilisation

The Client shall:

- 9.2.1 prior to the Mobilisation Date:
  - (a) prepare the Client's premises for the Mobilisation and use of the Equipment;
  - (b) provide ATI with complete and accurate details of any immovable obstacles which are reasonably likely to impact upon the Mobilisation process (including, without limitation, photographs of any such obstacles); and
  - (c) obtain and maintain all necessary licences, permissions and consents which may be required in relation to the Mobilisation, use, operation, storing, repair and maintenance of the Equipment; and
- 9.2.2 provide ATI, its employees, agents, consultants and subcontractors, with access to the Site and other facilities as reasonably required by ATI in connection with Mobilisation.

## 9.3 During the Hire Period

The Client shall, at all times during the Hire Period:

- 9.3.1 use the Equipment solely for the purpose of storing the Contents' and shall not use the Equipment for any other purpose without ATI's prior written consent;
- 9.3.2 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by ATI;
- 9.3.3 take such steps (including compliance with all safety and usage instructions provided by ATI) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

- 9.3.4 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on Mobilisation (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
- 9.3.5 maintain at its own expense any certifications for the Equipment of which it had been informed in writing by ATI on or before the Mobilisation Date, and which were valid and subsisting as at the Mobilisation Date;
- 9.3.6 make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of ATI unless to comply with any mandatory modifications required by law or any regulatory authority or unless the component (or components) is (or are) replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved or advanced version of it. Title in all substitutions, replacements, renewals made in or to the Equipment shall vest in ATI immediately on installation;
- 9.3.7 keep ATI fully informed of all material matters relating to the Equipment;
- 9.3.8 keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without ATI's prior written consent;
- 9.3.9 permit ATI or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 9.3.10 maintain operating and maintenance records of the Equipment and make copies of such records available to ATI upon request, together with such additional information as ATI may reasonably require;
- 9.3.11 not, without the prior written consent of ATI, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 9.3.12 not without the prior written consent of ATI, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Client shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify ATI against all losses, costs or expenses incurred as a result of such affixation or removal;
- 9.3.13 not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of ATI in the Equipment and, where the Equipment has become affixed to any land or building, the Client must take all necessary steps to ensure that ATI may enter such land or building and recover the Equipment both during the Hire Period and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of ATI of any rights such

person may have or acquire in the Equipment and a right for ATI to enter onto such land or building to remove the Equipment;

- 9.3.14 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Client shall notify ATI and the Client shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify ATI on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 9.3.15 not use the Equipment for any unlawful purpose;
- 9.3.16 ensure that at all times the Equipment remains identifiable as being ATI's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- 9.3.17 deliver up the Equipment at the end of the Hire Period at such address as ATI requires, or if necessary allow ATI or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and
- 9.3.18 not do or permit to be done anything which could invalidate the insurances referred to in clause 8.3.

#### 9.4 **Demobilisation**

The Client shall:

- 9.4.1 where the Equipment has not been completely emptied prior to Demobilisation, inform ATI of the amount and nature of any substance or material which remains within the Equipment;
  - 9.4.2 unless otherwise agreed with ATI in writing, empty and clean the Equipment prior to the Demobilisation and deliver to ATI certification confirming the cleanliness of the Equipment; and
  - 9.4.3 prior to Demobilisation, provide ATI with detailed information regarding any materials used in conjunction with the Equipment.
- 9.5 The Equipment shall remain on hire at the Hire Rate until it has been inspected and confirmed to be satisfactorily cleaned and is available for hire.
- 9.6 The Client acknowledges that ATI shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Client or its officers, employees, agents and contractors, and the Client shall indemnify ATI in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by ATI arising out of, or in connection with any failure by the Client to comply with its obligations in this clause 9.

#### 10. **WARRANTY**

- 10.1 ATI warrants that the Equipment shall substantially conform to its specification (as made available by ATI), be of satisfactory quality and fit for any purpose held out by

ATI as at the date of completion of Mobilisation. ATI shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within 28 days from completion of Mobilisation, provided that:

- 10.1.1 the Client notifies ATI of any defect in writing within two Business Days of the defect occurring;
  - 10.1.2 ATI is permitted to make a full examination of the alleged defect;
  - 10.1.3 the defect was not caused, in whole or in part, by misuse, neglect, mishandling or unauthorised alteration or manipulation;
  - 10.1.4 the defect was not caused, in whole or in part, by any information, design or any other assistance supplied by the Client or on its behalf; and
  - 10.1.5 the defect is directly attributable to defective material, workmanship or design.
- 10.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by ATI, the Client shall be entitled only to such warranty or other benefit as ATI has received from the manufacturer.
- 10.3 If ATI fails to remedy any material defect in the Equipment in accordance with clause 10.1, ATI shall, at the Client's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Hire Rate payable for the remainder of the Hire Period.

## **11. INDEMNITY**

- 11.1 The Client shall indemnify, defend and hold harmless ATI against all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and reasonable professional costs and expenses) suffered or incurred by ATI as a result of:
- 11.1.1 any claim made against ATI by a third party arising out of or in connection with pollution of any nature whatsoever emanating from the Equipment whilst it is in the Client's possession or under the Client's control;
  - 11.1.2 the Client's breach of clause 9.3.

## **12. LIMITATION OF LIABILITY**

- 12.1 References to "**liability**" in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Nothing in the Contract limits any liability for:
- 12.2.1 death or personal injury caused by negligence;
  - 12.2.2 fraud or fraudulent misrepresentation;
  - 12.2.3 breach of the terms implied by section 7 of the Supply of Goods and Services Act; or
  - 12.2.4 any liability that legally cannot be limited.

- 12.3 Subject to clause 12.2, ATI's total liability to the Client shall not exceed the greater of (a) 100% of the Fees actually paid to ATI by the Client in connection with the Contract in the 12-month period immediately prior to the event giving rise to such liability; or (b) £100,000.
- 12.4 Subject to clause 12.2, ATI shall not be liable under the Contract for any:
- 12.4.1 loss of profits;
  - 12.4.2 loss of sales or business;
  - 12.4.3 loss of agreements or contracts;
  - 12.4.4 loss of anticipated savings;
  - 12.4.5 loss of use or corruption of software, data or information;
  - 12.4.6 loss of or damage to goodwill; and
  - 12.4.7 indirect or consequential loss.
- 12.5 Subject to clause 12.2, all implied terms and conditions as to the quality or performance of the Equipment and any other goods or services provided under the Contract are, to the fullest extent permitted by law, excluded from the Contract.
- 12.6 This clause 12 shall survive termination of the Contract.

### **13. TERMINATION**

- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.1.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such a breach is remediable) fails to remedy that breach within 5 Business Days of that party being notified in writing to do so;
  - 13.1.2 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - 13.1.3 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986 ("IA 1986"), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 13.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the IA 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

- 13.1.5 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.1.6 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, ATI may terminate the Contract with immediate effect by giving written notice to the Client if:
  - 13.2.1 the Client fails to pay any amount due under the Contract on the due date for payment and remains in default 7 days after being notified that payment is due; or
  - 13.2.2 there is a change of control of the Client.
- 13.3 The Contract shall automatically terminate if the Equipment is, in ATI's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

#### **14. CONSEQUENCES OF TERMINATION**

- 14.1 On termination of the Contract, however caused:
  - 14.1.1 the Client shall immediately pay to ATI all of ATI's outstanding unpaid invoices and interest and, in respect of Equipment hired but for which no invoice has been submitted, ATI shall submit an invoice, which shall be payable by the Client promptly on receipt;
  - 14.1.2 ATI's consent to the Client's possession of the Equipment shall terminate;
  - 14.1.3 ATI may, by its authorised representatives, without notice and at the Client's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located;
  - 14.1.4 the Client shall ensure the safe and proper storage of the Equipment until it has been collected by ATI; and
  - 14.1.5 without prejudice to any other rights or remedies of the Client, the Client shall pay to ATI on demand:
    - (a) all Fees and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.11; and
    - (b) any costs and expenses incurred by ATI in recovering the Equipment or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).
- 14.2 Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination of these Conditions shall remain in full force and effect.
- 14.3 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

## **15. FORCE MAJEURE**

Neither party shall be liable for any delay of failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control.

## **16. CONFIDENTIAL INFORMATION**

16.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2.

16.2 Each party may disclose the other party's confidential information:

16.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16; and

16.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3 Neither party may use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **17. ASSIGNMENT AND OTHER DEALINGS**

17.1 ATI may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

17.2 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

## **18. ENTIRE AGREEMENT**

18.1 The Contract constitutes the entire agreement between the parties.

18.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18.3 Nothing in this clause 18 shall limit or exclude any liability for fraud.

## **19. VARIATION**

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**20. NO PARTNERSHIP OR AGENCY**

- 20.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**21. THIRD PARTY RIGHTS**

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**22. NOTICES**

- 22.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - 22.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 22.1.2 sent by email to the email address set out in the Hire Contract or such other email address that is last used in correspondence between the parties.
- 22.2 Any notice shall be deemed to have been received:
  - 22.2.1 if delivered by hand, at the time the notice is left at the proper address;
  - 22.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - 22.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.
- 22.3 This clause 22 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**23. WAIVER**

- 23.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 23.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

**24. SEVERANCE**

- 24.1 If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

24.2 If any provision or part-provision of these Conditions is deemed deleted under clause 24.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**25. GOVERNING LAW**

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**26. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.