

TERMS AND CONDITIONS

CONDITIONS

1 Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires:

- "Agreement"** means together the Order Form, the Conditions, the Special Terms and the Commercial Details for the provision of the Services and where there is no Order Form shall mean together the Quotation, the Conditions and Special Terms;
- "CEDR"** the Centre for Dispute Resolution;
- "Charges"** means the charges set out in the Order Form or where there is no Order Form the Quotation, subject to any provisions in the Special Terms or listed in Appendix A;
- "Company"** means the NSS company whose details are set out in the Order Form, or if there is no Order Form the NSS company which issued the Quotation;
- "Commercial Details"** means any items listed in Appendix A relevant to the provision of Services as agreed between the Parties;
- "Conditions"** means these terms and conditions and which are available at www.nssgroup.com
- "Customer"** means the person named on the Order Form, or if there is no Order Form, the person named in the Quotation, for whom the Company has agreed to provide the Services in accordance with the Agreement;
- "Data Protection Legislation"** the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other applicable laws (including, without limitation, replacement legislation) coming into effect from time to time relating to the processing of personal data in the UK;
- "Document"** includes, in addition to a document in Writing, a map, plan, design, drawing, picture or other image, or any other record of any materials, data or information in any form;
- "Employee"** those employees whose contracts of employment transfer to the Company from the Customer or any Incumbent Supplier pursuant to TUPE;
- "Employee Liability Information"** in respect of each of the Employees:
- a) the identity and age of the Employee;
 - b) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
 - c) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
 - d) information about any court or tribunal case, claim or action either brought by the Employee against the Customer and/or any Incumbent Supplier within the previous two (2) years or where the Customer and/or an Incumbent Supplier has

TERMS AND CONDITIONS

reasonable grounds to believe that such action may be brought against the Company arising out of the Employee's employment with the Customer and/or an Incumbent Supplier; and

- e) information about any collective agreement which will have effect after the transfer of the Employee to the Company in relation to the Employee pursuant to regulation 5(a) of TUPE.

"Force Majeure"	a force majeure event means any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party); and (h) interruption or failure of utility service;
"Goods"	means all goods and materials supplied by the Company when carrying out the Services;
"Health and Safety File"	the file as referred to under clause 7.7;
"Health and Safety Plan"	the plan as referred to under clause 7.7;
"Health and Safety Policies"	the Customer's Health and Safety policies notified to the Company from time to time;
"Incumbent Supplier"	any supplier of the Services prior to the transfer of the Services to the Supplier;
"National Minimum Wage"	the minimum wage per hour to which a worker is entitled calculated according to their age, as may be varied from time to time;
"Order Form"	means the Particulars of the Agreement on the front page to which these Conditions are attached and which incorporate these Conditions and any Special Terms and Appendix A, or if there is none the Quotation, which apply to the provision of Services;
"Parties"	has the meaning given to it in the Order Form, or if there is no Order Form it means the Customer and the Company;
"Public Holiday"	Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday;
"Quotation"	a quotation provided by the Company to provide Services to the Customer;
"Retail Prices Index"	a consumer price index published by the Office of National Statistics;
"Redundancy Costs"	means any redundancy payment or payment in respect of notice;
"Service Address(es)"	means the premises at which the Company will provide the Services as set out in Appendix A;

TERMS AND CONDITIONS

"Services"	means the works and/or service to be provided by the Company for the Customer and identified in the Order Form, or if none those specified in the Quotation;
"Service Address Closure"	means: <ul style="list-style-type: none">(i) any closure of a specific Service Address; and/or(ii) the Customer ceasing to operate from a Service Address or the Customer ceasing to be the managing agent at a Service Address;
"Service Frequency"	the frequency, if applicable, within which those Services shall be carried out as set out in Appendix A;
"Special Terms"	means the Schedules to these Conditions as may be incorporated from time to time by ticking the relevant box on the first page of the Order Form (or if there is no Order Form which are, deemed incorporated by reference according to the nature of the Services prescribed in the Quotation);
"Term"	has the meaning given to it in clause 9.1;
"TUPE"	means Transfer of Undertakings (Protection of Employment) Regulations 2006;
"VAT"	means value added tax or any similar tax in addition to or substitution for it;
"Week"	means Monday to Sunday;
"Working Day"	shall be from 8.00 am to 4.30 pm Monday to Thursday, and 8.00 am to 3.30 pm on Friday, allowing a half-hour lunch break each day, unless otherwise specified in the Agreement;
"Working Week"	covers the period from 8.00 am on Monday to 3.30 pm on Friday, unless otherwise specified in the Agreement;
"Writing"	means any written document including facsimile transmission and/or electronic mail or other forms of electronic communication.

- 1.2 the headings in this Agreement are for convenience only and shall not affect their interpretation and references to numbered clauses, schedules or paragraphs are references to the relevant clauses or schedules in this Agreement or the relevant paragraph of this Agreement respectively;
- 1.3 any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provisions as amended, re-enacted or extended at the relevant time;
- 1.4 any reference to a person shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;
- 1.5 any reference to the singular shall include the plural and vice versa and any reference to the masculine gender shall include the feminine and neuter and vice versa;
- 1.6 where any Party comprises two (2) or more persons, any obligations of that Party in, under or arising from this Agreement is undertaken by or binding upon such two (2) or more persons jointly and severally;
- 1.7 references to any Party to this Agreement include its successors-in-title and permitted assignees;
- 1.8 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept, state of affairs or thing shall in respect of any jurisdiction

TERMS AND CONDITIONS

other than England be deemed to include that which most approximates in that jurisdiction to the English legal term; and

- 1.9 references to times of the day are to London time and references to a day are to a period of 24 hours commencing at midnight at the start of the day. Where under this Agreement an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be included.
- 1.10 If there is any inconsistency between the Conditions and the Special Terms, the Special Terms insofar as they relate to the particular Services shall prevail.

2 Supply of the Services

- 2.1 The Company shall provide the Services to the Customer subject to the terms and conditions in this Agreement. Any changes or additions to the Services or these terms and conditions must be agreed in writing by the Company and the Customer in accordance with clause 12.1 below.
- 2.2 All plant and machinery brought to the Service Address shall remain the property of the Company at all times. Any materials brought to the Service Address by the Company shall remain the property of the Company (notwithstanding their incorporation into any property belonging to the Customer) until full payment is received by the Company.
- 2.3 Any date given by the Company for undertaking or the completion of the Services or any part thereof is for the Customer's convenience only and shall not make time of the essence. The Company shall use all reasonable endeavours to ensure that the Services are supplied within a reasonable time but shall not be liable in respect of any delay.
- 2.4 The Company may at any time without notifying the Customer make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services. The Company will provide Services in accordance with all applicable laws and so as not to breach any laws.
- 2.5 The Customer warrants that all Documents or other material, and all necessary data or other information supplied by the Customer relating to the Services are accurate.
- 2.6 The Customer is responsible for and shall obtain all planning and other consents, licences, permits and agreements (whether public or private) necessary for the supply of the Services.
- 2.7 When required the Company may use the services of a sub-contractor for part or all of the Services.
- 2.8 The Customer shall, free of charge, allow and/or procure sufficient access to and from the relevant Service Address and procure sufficient unloading space, facilities, equipment and access to utilities for the Company's employees, sub-contractors and/or agents to allow them to perform the Services. The Customer will ensure that the Service Address where the Services are to be performed is, where necessary, cleared and prepared before the Services are due to commence, and that it has carried out a full risk assessment before the Company is provided with access. The Customer shall provide the Company with full method statements where the Company requires them to undertake the Services.
- 2.9 Where the Company provides Services the persons performing the Services are servants of the Customer and once the Customer instructs such person they are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice except to the extent that the persons performing the Services are negligent.
- 2.10 The Customer agrees it will use any Goods supplied in connection with the Services in accordance with all relevant manufacturer's instructions and recommendations.
- 2.11 If any Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation except where the customer is acting as a consumer and the delay is due to a Force Majeure event.

TERMS AND CONDITIONS

3 Standard Of Services

- 3.1 The Company agrees to carry out the Services:
- 3.1.1 to the standard expected of a properly qualified person experienced in the provision of services similar in size, scope, value, purpose and complexity to the Services and the Company will use the skill, care and diligence to be expected of such a person;
 - 3.1.2 to a good standard of workmanship and using good quality Goods which are fit for their purpose;
 - 3.1.3 in accordance with such reasonable requirements as the Customer may from time to time notify to the Company including security and hours of access to the Service Address but the Customer acknowledges this may increase the Charges; and
 - 3.1.4 if required to connect to any service media, only with the Customer's prior written consent and in accordance with such requirements as the service media provider may reasonably impose.
- 3.2 Other than in relation to Plant, and unless specifically agreed otherwise with the Company, the Company has based its Charges in relation to Services on the delivery of a standard of service to the Customer rather than an assessment of labour quantities.

4 Charges

- 4.1 Subject to any Special Terms, the Customer shall pay the Company's Charges and any additional sums which are agreed between the Company and the Customer for the provision of the Services.
- 4.2 The Company shall be entitled to vary the Company's Charges from time to time by giving not less than one (1) months' notice in Writing to the Customer to take effect when any legislation or regulations are enacted or implemented or become applicable and which give rise directly or indirectly to increased costs in providing the Services. This clause 4 incorporates any changes to the National Minimum Wage.
- 4.3 Without prejudice to clause 4.1 the Charges shall be increased every 12 months by no less than the Retail Prices Index.
- 4.4 All Charges quoted to the Customer for the provision of the Services are exclusive of any VAT, and other similar duties or taxes, for which the Customer shall be additionally liable at the applicable rate from time to time.
- 4.5 The Company shall be entitled to invoice the Customer during the month in which the Services are provided, or at any other times as agreed with the Customer and/or as set out in Appendix A.
- 4.6 The Company's Charges and any additional sums payable shall be paid by the Customer (together with any applicable VAT, and without any set-off or other deduction) within 30 days of the date of the Company's invoice. For the avoidance of doubt, where the Customer has entered into one or more agreements with the Company and/or any group company of the Company, the Customer shall not be entitled to set off monies owed under any or all of the other agreements by the Company or any group company against this Agreement or vice versa.
- 4.7 Time of payment of Charges shall be of the essence. In accordance with the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent legislation, if payment is not made on the due date, the Company shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after the judgement) at the rate of 3% above the base rate from time to time of HSBC Bank plc from the due date until the outstanding amount is paid in full. In addition failure by the Customer to make the payment shall entitle the Company to terminate the Agreement or to suspend Services until payment is received.

5 Additions And Removal Of Service Addresses

The Customer must give the Company notice of any request to add or remove any Service Address from the Agreement it requires from time to time and the Company has one (1) calendar month to confirm its agreement to the addition or removal, as the case may be. Should the Company not confirm its acceptance within the timeframe, the Agreement shall not be deemed amended and it will continue as not amended. If

TERMS AND CONDITIONS

the Company agrees to the change to the Service Address the Company will provide details of any revised Charges due in respect of the variation.

6 Employees

- 6.1 The Customer agrees that it will not offer employment to any of the Company's employees for a period of six (6) months from the date the Agreement ends. If employment is offered to and accepted by an employee in breach of this clause 6 the Customer shall pay to the Company an agency fee of 20% of the first year's salary paid by the Customer to the Employee.
- 6.2 In the event that the Customer instructs the Company permanently to remove one of their employees from the Service Address then the Customer will confirm such an instruction in writing and provide the reasons for the instruction.
- 6.3 This Agreement has been costed taking into account the provisions of TUPE.
- 6.4 The Customer represents, warrants and undertakes to the Company that:
- 6.4.1 the Customer will provide the Employee Liability Information or will procure that an Incumbent Supplier will provide the Employee Liability Information to the Company on request and no later than 28 days before any transfer;
- 6.4.2 the Customer will notify the Company in writing of any change in the Employee Liability Information; and
- 6.4.3 the Customer warrants that the Employee Liability Information is true, full and accurate.
- 6.5 The Customer shall indemnify the Company in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Company including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 6.5.1 the termination by the Customer or any Incumbent Supplier of the employment of any of the Employees;
- 6.5.2 anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by the Company by virtue of TUPE; and
- 6.5.3 any liability for breach of clause 6.4.3 above;
- 6.5.4 the termination of employment of any Employee within 12 months of the date of the transfer of any such Employee from the Customer or Incumbent Supplier to the Company in the event that such termination of employment is by reason of the Customer terminating this agreement within a period of 12 months from any such transfer. For the avoidance of doubt this shall include any claims for wrongful dismissal, unfair dismissal, notice pay, redundancy pay arising in respect of such termination.
- 6.6 In the event that any Employee Liability Information provided to the Supplier is inaccurate, misleading or inadequate the Company may increase the Charges to cover any additional costs incurred.
- 6.7 In the event of a Service Address Closure, it is agreed that the Customer will indemnify the Company for any Redundancy Costs arising out of the redundancy of any employee employed or otherwise engaged by the Company at the Service Address where the Service Address Closure takes place.
- 6.8 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the date of transfer from the Customer or the Incumbent Supplier to the Company.

7 Health And Safety

In relation to each Service Address, the Customer shall:

- 7.1 comply with all laws relating to health and safety matters and bring any Health and Safety Policies to the attention of all persons performing the Services;

TERMS AND CONDITIONS

- 7.2 take all proper steps to ensure that by the Company carrying out the Services, it does not make any of the following unsafe: the structure of the Service Address or any building of which the Service Address forms part; any plant or machinery at the Service Address; or any neighbouring land or building.
- 7.3 take all proper steps to inform the Company of any actual or potential risks to which the Company's employees are likely to be exposed to as a result of their work at the Service Address, including but not limited to exposure to asbestos at the Service Address and the maintenance and provision of an up to date and accurate Asbestos register where works are liable to disturb asbestos, as required in accordance with legislation;
- 7.4 ensure that the Service Address is kept clean, tidy and clear of rubbish and all equipment within, and on the exterior of, the Service Address including but not limited to that which the Company's employees are likely to use in the course of their work is kept in good working order, maintained and that all relevant statutory inspections and checks are carried out;
- 7.5 safeguard the health, safety and welfare at work of all persons which may be affected by the Customer's business activities under this Agreement and persons carrying out the Services enabling the Services to be provided in a safety conscious manner;
- 7.6 have regard to the health and safety and provide all necessary information, training and supervision in safe working practices, to all employees and other persons affected by the provision of Services; and
- 7.7 maintain and make available to the Company for inspection upon request it's Health and Safety Plan and Health and Safety File.

8 Warranties and liability

- 8.1 The Company warrants to the Customer that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Order Form or if none, the Quotation, and at the intervals and within the times referred to in Appendix A. Where the Company supplies in connection with the provision of the Services any goods supplied by a third party, the Company does not give any warranty, guarantee, or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Company.
- 8.2 In the event of any issue with the provision of Services, the Customer shall notify the Company and give the Company a reasonable opportunity to remedy any matter for which the Company is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Company shall have no liability to the Customer.
- 8.3 The Company shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Documents or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.
- 8.4 Nothing in this Agreement including the Special Terms shall exclude or limit the liability of the Company for death or personal injury due to the Company's negligence or for any liabilities which may not be excluded by law, or as expressly provided in these terms.
- 8.5 The Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Agreement, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Customer, and the entire liability of the Company under or in connection with the Agreement shall not exceed the annual amount of the Company's Charges for the provision of the Services, except as expressly provided in these terms.
- 8.6 Notwithstanding clause 8.4, the Company shall have no liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Agreement and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Company.

TERMS AND CONDITIONS

- 8.7 The Company shall not be liable to the Customer or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control including as a result of Force Majeure.
- 8.8 The Customer shall indemnify the Company in full against all loss, claims, damages, injury, cost and expenses and legal and other professional fees and expenses including, without limitation, loss of profit, loss of business, depletion of goodwill, loss of data, and business interruption, awarded against or incurred or paid by the Company as a result of or in connection with:
- 8.8.1 defective materials supplied by the Customer for use by the Company in the provision of Services;
- 8.8.2 infringement or alleged infringement of any intellectual property rights caused by the Customer's instructions to the Company in relation to the provision of Services or any Goods;
- 8.8.3 any claim made against the Company in respect of any liability, loss, damage, cost or expense sustained by the Company's employees or agents or by any customer or third party as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of this Agreement by the Customer, its employees, agents and contractors or breach of statutory duty;
- 8.8.4 all acts, defaults, neglect, conduct or misconduct of, or breach of statutory duty by, the Customer's employees, agents and sub-contractors whilst the Company is providing services to the Customer; or
- 8.8.5 any non-performance by the Customer, its employees, agents or sub-contractors.

9 Duration and Termination

- 9.1 The Agreement shall start on the Commencement Date or date of actual commencement of all or any part of the Services if sooner and, subject to the following provisions of this clause 9, shall continue for the Minimum Term unless the Company provides otherwise in Appendix A, and in the case of the hire of plant only, the Period of Hire. Upon the expiry of the Minimum Term which will apply save in relation to the hire of plant, the Agreement shall automatically continue until such time as the Agreement is terminated in accordance with clause 9.2 (**Term**).
- 9.2 The Agreement may be terminated by either Party by providing a minimum of 3 calendar months' notice in Writing. Such notice may only be issued after the expiry of the Minimum Term and is to be effective at the end of a calendar month.
- 9.3 The Company may terminate this Agreement with immediate effect by giving the Customer written notice if the Customer is in a substantial breach of this Agreement which is not capable of remedy; or by giving the Customer written notice if the Customer is in a breach of this Agreement and the Customer fails to remedy such breach within seven (7) days of receiving notice from the Company requiring the Customer to do so.
- 9.4 Either Party may (without limiting any other remedy) at any time terminate the Agreement by giving written notice to the other if the other goes into liquidation, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.
- 9.5 It shall be assumed that if no written notification is received by the Company then the Services are giving satisfaction to the Customer and are being performed efficiently. Any failure to provide the Service should be reported to the Company within 48 hours by telephone with confirmation in writing within seven (7) days of occurrence. The Company will not be liable for any claim that may arise that is not notified within this specified period of time.
- 9.6 The Customer hereby acknowledges and accepts that if it vacates the Service Address for any reason whatsoever it shall remain liable to pay the Company such Charges, costs and expenses as it would have incurred had the Customer remained in occupation until the expiry of the current Term. In addition the Customer agrees to indemnify the Company in respect of all costs incurred in respect of the Company's employees including without limitation redundancy payments as a result of the Customer ceasing to occupy the Service Address. For the avoidance of doubt removal of the Customer from the Service Address by any superior landlord or licensor shall not amount to circumstance of Force Majeure.

TERMS AND CONDITIONS

- 9.7 Upon termination of this Agreement for whatever reason the Company shall upon giving reasonable notice to the Customer be permitted to remove all or any of its machinery, equipment and materials, which may have been placed by it upon the Service Address and the Customer hereby grants permission to the Company to enter the Service Address with or without workmen or other necessary persons and to carry out such removal.
- 9.8 Upon termination of the Agreement those clauses which are intended to remain enforceable in these Conditions and the Special Terms will continue in full force and effect.

10 Remedies

- 10.1 Any termination or expiry of this Agreement is without prejudice to any claims which either Party may have against the other.
- 10.2 Without prejudice to any other right or remedy which the Company may have under this Agreement or otherwise, if the Customer fails to comply with any of the terms of this Agreement the Company shall be entitled at its discretion:
- 10.2.1 to rescind this Agreement;
- 10.2.2 to refuse to provide any further Services but without any liability to the Customer; and
- 10.2.3 to claim such damages as may have been sustained in consequence of the Customer's breach or breaches of this Agreement, in all cases whether or not any part of the Services have been provided by the Company.

11 Data Protection

- 11.1 The Parties agree and acknowledge that neither party shall process any personal data on behalf of the other. Any personal data processed by either party in connection with the performance of its obligations under this Agreement shall be in its capacity as a controller and each party undertakes to comply, and shall procure that its employees, agents and sub-contractors comply, with the Data Protection Legislation.
- 11.2 The Customer agrees to indemnify the Company against any liabilities, costs and expenses that are incurred or arise out of the failure of its employees, agents and sub-contractors, to comply with the Data Protection Legislation.

12 General

- 12.1 The terms of the Order Form (or if there is no Order Form, the Quotation), these Conditions together with the terms, if any, set out in the Special Terms and Appendix A constitute the entire Agreement between the parties, supersede any previous agreement or understanding and may not be varied except in Writing between the parties and in the case of the Company signed for and on behalf of the Company either by a director of the Company or the Company Secretary. All other terms, express or implied by statute or otherwise, including any terms endorsed upon or contained in the Customer's order form, acknowledgement or acceptance of any Order Form or Quotation will not form part of this Agreement and are excluded to the fullest extent permitted by law.
- 12.2 All information acquired by the Customer relating to the Company's business shall be treated by the Customer as confidential (during and after this Agreement) and the Customer shall not make any use or disclosure of it without the Company's prior written authorisation.
- 12.3 A notice required or permitted to be given by either Party to the other under these terms shall be in Writing addressed to the other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.
- 12.4 No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.5 The Customer shall not be entitled to make any claim against the Company or its employees unless it gives the Company 28 days' notice in Writing of the event giving rise to such claim, containing sufficient

TERMS AND CONDITIONS

information for it to be identified and investigated by the Company within seven (7) days of the date upon which the Customer became aware, or should reasonably have become aware, of the occurrence of such event.

- 12.6 If any provision of the terms of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and the remainder of the provision in question shall not be affected.
- 12.7 The Customer shall not be entitled to assign or subcontract any of its rights or duties under this Agreement or any part of it without the Company's prior written consent which may include restrictions. The Company is an independent contractor and is not the Customer's servant or agent. If the Customer is a sole trader, the Customer shall bear exclusive responsibility for payment of its National Insurance contributions as a self-employed person and for discharge of any income tax and VAT liability arising out of remuneration for the Company's work performed under this Agreement. The Company 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 this Agreement.
- 12.8 The Customer will maintain insurance in an amount reasonably adequate to cover any liabilities arising out of its obligations hereunder and, upon request will provide to the Company a certificate of insurance showing that such insurance is in place, which certificate shall demonstrate the amounts, exclusions and deductibles of such insurance coverage.
- 12.9 The Company will have in force all insurances required by law to perform the Services which would normally be obtained by a competent person supplying the Services including but not limited to employer's liability, public liability, product liability and professional indemnity insurance.
- 12.10 The intellectual property rights in any Documents provided by the Company in connection with the Services do not vest in the Customer.
- 12.11 A person who is not Party to this Agreement has no benefits or rights under the Contracts (Rights of Third Parties) Act 1999 and the Parties hereby confirm that this Agreement shall not confer or purport to confer on any third party any right to enforce any term of the Agreement.
- 12.12 Notwithstanding clause 12.13, if any dispute or difference arises between the Parties under or in relation to this Agreement the Parties will their best endeavours to try to resolve the dispute or difference initially by discussing the matter, and if no resolution is achieved, the Parties will attempt to settle it by mediation in accordance with the current version of the CEDR Model Mediation Procedure. Unless otherwise agreed by the Company, the mediator will be nominated by CEDR.
- 12.13 English law shall apply to the Agreement and the parties agree to submit to the exclusive jurisdiction of the English courts.

This Agreement has been signed on the date of the last signature at the end of page 1 of this Order Form. In the event it is not signed, the Agreement is effective at the time the Company commences the provision of all or part of the Services.

TERMS AND CONDITIONS

Schedule 1

Special Terms for the provision of Window Cleaning Services

- 1 The primary purpose of the Services to which this Schedule 1 applies is for window cleaning at the Service Address.
- 2 Notwithstanding the provisions of clause 6.8, the Company shall not be liable in respect of any allegation that either the standard of clean is inadequate or incomplete or that any item or particle or place that should have been cleaned has not been cleaned unless such fault is raised in writing to the Company within five (5) Working Days of the date on which the clean in question occurred or should have occurred (in the case of an omission to clean) and the Company is granted a reasonable time to rectify such failure.

TERMS AND CONDITIONS

Schedule 2

Special Terms for the provision of Planned Preventative and Reactive Maintenance including Inspection and Testing Services

1 Definitions And Interpretation

In addition to the Definitions in the Order Form, these definitions have the following meaning in this Schedule 2:

"CITB"	means the Construction and Industry Training Board;
"Design Life Criteria"	means the product certification provided by the British Board of Agrément confirming that the Goods meet the applicable international accreditation standards;
"Emergency Event"	means an event which is designated by the Customer as an emergency;
"Inspection and Testing Services"	means maintenance of the items specified in and at the frequency specified in Appendix A, or if there is no Appendix A, the Quotation;
"Minor Repair Works"	means small scale works, as assessed as such by the Company acting reasonably, carried out by the Company in relation to any Reactive Maintenance and/or Planned Preventative Maintenance work where the nature of such repairs does not account for the condition of the surrounding substrate and where the Company cannot guarantee the repair, and/or the environment, and/or the materials of the area surrounding the repair;
"Planned Preventative Maintenance"	means maintenance of the items specified in and at the frequency specified in Appendix A or if there is no Appendix A, the Quotation ;
"Reactive Maintenance"	means maintenance of the items specified in and within the time frames specified in Appendix A or if there is no Appendix A, the Quotation which are outside of any Planned Preventative Maintenance;
"Recall Visit"	means a subsequent visit requested by the Customer and accepted by the Company to attend the Service Address to carry out any additional Reactive Maintenance and/or Planned Preventative Maintenance.
"Records"	means the Customer's written records produced for the purposes of receiving the Services;

2 The Services

- 2.1 The primary purpose of the Services to which this Schedule 2 applies is for Planned Preventative Maintenance and/or Reactive Maintenance at the Service Address.
- 2.2 Notwithstanding clause 2, the Services shall be performed at the Service Address and shall commence on the Commencement Date and be completed in their entirety on or before the end of the Minimum Term or any other Term agreed between the Customer and the Company in writing.
- 2.3 The Company will only carry out repairs in accordance with this Agreement or if the Company is effecting repairs as a result of an Emergency Event and then only to the extent deemed necessary by the Company.
- 2.4 If the Company is authorised to carry out repairs or where a repair is necessary, the Company agrees to make safe all installations prior to leaving the Service Address.
- 2.5 The Customer will provide the Company with details of contacts for out of hours and Emergency Events and keep the Company promptly informed in writing of all changes to these details.
- 2.6 If requested by the Customer, the Company shall prior to commencing the Services provide a programme of intended activities. Thereafter the Company shall at all times proceed with the Services reasonably in accordance with programme. Any modification is only permitted by varying the Agreement in accordance with clause 12.1.

3 Price

- 3.1 Notwithstanding the Order Form or if there is none, the Quotation:

TERMS AND CONDITIONS

3.1.1 all prices have been costed on the basis of an allocated period of time for the Services. The Customer agrees that the hourly rate for labour may be increased on each anniversary of the Commencement Date by the increase in the published CITB rates; and

3.1.2 all Emergency Event work labour shall be charged at the then current published Joint Industry Board call out rates applicable to the Services.

4 Access And Inspection

4.1 The Customer will allow the Company to inspect the Service Addresses in relation to the provision of Services and all Customer Records relating to the same during any Working Day.

4.2 As part of the Services, the Customer will test and commission any equipment and plant as the Company may require under this Agreement and in the presence of and for the approval of the Company representative.

4.3 The Company will be allowed access to the Service Address at times set out in Appendix A or which are agreed in writing between the Parties.

4.4 If the Company is the last to leave any Service Address at any time, the Customer must make arrangements to ensure that the site is fully secured and all alarms set.

5 Maintenance

5.1 To the extent that the Services include regular maintenance or testing, the Company will perform the Services at the Service Frequency.

5.2 If the Services involve Planned Preventative Maintenance or inspection:

5.2.1 the Company will notify the Customer before carrying out any Planned Preventative Maintenance (including any inspection of the Service Address) at least 7 days before it is due to occur (unless the Parties agree in writing otherwise);

5.2.2 the Customer will immediately report to the Company all matters the Company ought reasonably to be made aware of and which the Customer has discovered or ought to discover; and

5.2.3 the Customer will periodically test all equipment and plant as part of the Services at the frequency and as recommended by the manufacturers.

5.3 If the Services involve Reactive Maintenance the Customer will use all reasonable endeavours to notify the Company's representative of all matters of which the Customer becomes aware as soon as possible.

6 Inspection and Testing Services

6.1 If the Company is required to carry out Inspection and Testing Services as part of the Services, the Company shall at the Service Frequency set out in Appendix A or if there is no Appendix A, the Quotation:

6.1.1 examine, clean and adjust all parts of the equipment specified in Appendix A or if there is no Appendix A, the Quotation, and, if required and at the Customer's expenses, repair and replace the equipment and shall maintain all parts of the equipment in a safe and efficient working order; and

6.1.2 unless otherwise agreed in Writing at the Customer's expense, provide and apply if necessary cleaning materials, oils and greases but excluding [the draining out of any gear box and replenishing with fresh oil].

6.2 If required by the Customer, the Company will provide competent engineers to carry out emergency or other necessary Inspection and Testing Services at any time (including night time and weekends) outside the agreed Service Frequency at Charges specified by the Company in Writing.

6.3 Where repairs or replacement of component parts have not been occasioned or necessitated in either case by the Company's neglect or default or found to be necessary on occasion of periodic examination or any other attendances, before leaving the premises the Company will report the same to the Customer and after that in consultation with the Customer carry out as soon as is practicable the work at such times so as not to cause undue delay in returning the equipment to service provided that if such cost of any such repair individually exceeds or is likely to exceed the figure set out in Appendix A such repair or replacement shall not be carried out until the Customer has accepted in Writing a Quotation for it.

TERMS AND CONDITIONS

- 6.4 If, as a result of Inspection and Testing Services, equipment is unavailable the Company will display appropriate notices. Notwithstanding clause 8, the Company has no further liability to the Customer for the unavailability of the equipment,
- 6.5 No more than five (5) days after each Inspection and Testing Service the Company will send to the Customer a:
- 6.5.1 certificate confirming that the relevant item of equipment complies with then current legislation; or
- 6.5.2 if it does not comply with legislation, a report specifying the condition of the item of equipment, the work undertaken during the Inspection and Testing Services and any works necessary to ensure that the equipment does comply.

7 **Limitation of Liability**

- 7.1 Notwithstanding clause 8 of the Conditions:
- 7.1.1 Subject to paragraphs 7.1.2 and 7.1.3 below, where the Company carries out any Reactive Maintenance and/or Planned Preventative Maintenance work for the Customer, the Company provides the Customer with a twelve (12) month warranty (which shall run from the date on which the works are completed) in respect of the completed work, unless agreed otherwise in writing between the Company and the Customer. For the avoidance of doubt, clause 8.1 of the Conditions still applies.
- 7.1.2 A Recall Visit will be chargeable to the Customer as an additional sum where the basis of the Recall Visit is unrelated to any Reactive Maintenance and/or Planned Preventative Maintenance work carried out by the Company on the previous visit or where it relates to Reactive Maintenance and/or Planned Preventative Maintenance work which is not covered by any warranty.
- 7.1.3 The Company does not provide the Customer with any warranty for Minor Repair Works.
- 7.1.4 Where the Company is carrying out any Reactive Maintenance and/or Planned Preventative Maintenance work and applies:
- (a) protective liquid roof coatings; or
- (b) steel coverings; or
- (c) flat roof coverings,
- the Company shall transfer to the Customer the benefit of any Design Life Criteria given to the Company by the person supplying goods to the Company. Any claims that relate to such items shall be made against the manufacturer and the Company shall have no liability for the failure of the Goods to meet any Design Life Criteria.
- 7.1.5 Any warranty and Quotation provided by the Company and the provision of any Reactive Maintenance and/or Planned Preventative Maintenance services are based on:
- (a) the design of the system specified by the Customer. The Company is not liable for the performance of any performance specification nor any specified systems and the Customer shall be responsible for ensuring the performance of any performance specification or specified systems; and/or
- (b) a full package of steelwork design and all drawings and information requested by the Company being available to it. If the Company incurs additional sums when carrying out any Reactive Maintenance and/or Planned Preventative Maintenance due to the lack of the full package of steelwork design and the information provided by the Customer, the Customer shall be liable for any additional sums incurred by the Company.
- 7.1.6 Where the Company is requested to provide design development drawings, such costs are considered additional sums and will fall outside of the Company's Charges. For the avoidance of doubt, the Customer will be liable for the Company's full costs for preparing any design development drawings and any further drawings.

TERMS AND CONDITIONS

Schedule 3

Special Terms for the provision of Hiring of Plant

1 Definitions

1.1 In addition to the Definitions in the Order Form, these definitions have the following meaning in this Schedule 3:

- "Hire Period"** shall commence from the time when the Plant leaves the Company's depot or place where last employed and shall continue until the Plant is received back at the Company's named depot or other agreed location. For the avoidance of doubt the Hire Period includes the time Plant is left at a Service Address during a Holiday Period;
- "Holiday Period"** covers any cessation of work over Easter, Christmas and the New Year; as well as any other Public Holidays;
- "Idle Time Charges"** has the meaning given to it in paragraph 18.3;
- "Plant"** covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefore, which the Company agrees to hire to the Customer, or anything which is supplied by the Company to effect the hire, and anything supplied by the Company for the safe operation and routine inspection and maintenance of the Plant and as may be specified in Appendix A.

2 Extent Of Agreement and Acceptance Of Plant

2.1 The primary purpose of the Services to which this Schedule 3 applies is for the provision of hiring of Plant. Acceptance of the Plant at Service Address implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing.

3 Unloading And Loading

3.1 The Customer shall be responsible for the unobstructed access and egress and, unless otherwise agreed in writing, for unloading and loading of the Plant at the Service Address; and any personnel supplied by the Company for such unloading and/or loading shall be deemed to be under the direction and control of the Customer. Such personnel shall for all purposes in connection with their employment in the unloading and/or loading of the Plant be regarded as the servants or agents of the Customer (but without prejudice to any of the provisions of paragraph 12) who shall be solely responsible for all claims arising in connection with unloading and/or loading of the Plant by, or with the assistance of, such personnel.

4 Delivery In Good Order And Maintenance: Inspection Reports

- 4.1 Unless notification in writing to the contrary is received by the Company from the Customer in the case of Plant supplied with an operator within four (4) Working Days, and in the case of Plant supplied without an operator within three (3) Working Days, of the Plant being delivered to the Service Address, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Agreement and to the Customer's satisfaction, provided that where the Plant requires to be erected at the Service Address, the periods stated above shall be calculated from the date of completed erection of Plant. The Customer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and/or the Company's recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted).
- 4.2 The Customer shall at all times when hiring Plant without the Company's operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the Plant. If such Plant is continued at work or in use in an unsafe and unsatisfactory state or environment, the Customer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising therefrom.
- 4.3 Any inspection report required under the relevant legislation, or a copy thereof, shall be supplied by the Company, if requested by the Customer, and returned on completion of the Hire Period.

TERMS AND CONDITIONS

5 Servicing And Inspection

- 5.1 The Customer shall at all reasonable times allow the Company, his agents or his insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Customer shall allow such access during the Working Day.

6 Ground And Service Address Conditions

- 6.1 The Customer is deemed to have knowledge of the Service Address or the property or land where the Plant is to be delivered and the Customer warrants that the condition of the Service Address or place of delivery of the Plant is suitable for the use of such Plant.
- 6.2 If, in the opinion of the Customer, the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Customer shall supply and lay suitable timbers or equivalent support in a suitable position for the Plant to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.
- 6.3 Any timber or other material supplied by the Company is provided solely to assist the Customer under their duties within paragraph 6.2 and expressly not to relieve the Customer of its legal, regulatory or contractual obligations to ensure adequate stability of the Plant.
- 6.4 The Customer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Service Address and the Customer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

7 Handling Of Plant

- 7.1 When a driver or operator or any person is supplied by the Company with the Plant, the Company shall supply a person competent in operating the Plant or for such purpose for which the person is supplied and such person shall be under the direction and control of the Customer. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Customer (but without prejudice to any of the provisions of paragraph 12) and the Customer shall be solely responsible for all claims arising in connection with the operation of the Plant by the said drivers / operators / persons.
- 7.2 The Customer shall not allow any other person to operate such Plant without the Company's prior written consent.
- 7.3 Such drivers or operators or persons shall not operate any other plant or machinery or undertake work other than that for which they are supplied by the Company unless previously agreed in writing between the Company and the Customer.

8 Breakdown, Repairs And Adjustment

- 8.1 Any breakdown or the unsatisfactory working of or damage to any part of the Plant must be notified immediately to the Company, and confirmed in writing. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by the Company.
- 8.2 Full allowance for the Charges set out in the Order Form or if none, the Quotation, will be made to the Customer for any stoppage due to breakdown of the Plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of the Agreement.
- 8.3 The Customer shall not (except for the changing of any tyre and repair of punctures), repair, modify or alter the Plant without the prior written permission of the Company. The changing of any tyre and repair of punctures are however the responsibility of the Customer who should arrange for them to be changed / repaired. The Customer is responsible for all costs incurred in the changing or replacement of any tyre (which must be of an equivalent specification) as approved by the Company and for the repair of any puncture.
- 8.4 The Customer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Plant due to the Customer's negligence, misdirection or misuse of the Plant, whether by the Customer or his servants, and for the payment of hire at the Idle Time Charges during the period the Plant is necessarily idle due to such breakdown, unsatisfactory working or damage. The Customer is responsible for the cost of spares and/or repairs due to theft, loss or vandalism of the Plant. The Company will be responsible for the cost of repairs, inclusive of the cost of spares, to the Plant involved in breakdown from all other causes.

TERMS AND CONDITIONS

9 Other Stoppages

9.1 No claims will be admitted (other than those allowed for under "**Breakdown**" (paragraph 8) or for "**Idle Time**" (paragraph 18.3), as herein provided), for stoppages through causes outside the Company's control, including but not limited to bad weather and/or ground conditions nor shall the Company be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Customer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.

10 Loss Of Other Plant Due To Breakdown

10.1 Each item of Plant specified in the Agreement is hired as a separate unit and the breakdown or stoppage of one (1) or more units or vehicles (whether the property of the Company or otherwise) through any cause whatsoever, shall not entitle the Customer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, provided that where two (2) or more items of Plant are expressly hired together as a unit, such items shall be deemed to be one (1) unit for the purpose of breakdown.

11 Limitation Of Liability

In addition to clause 7.1, except for liability on the part of the Company which is expressly provided for in the Agreement (including these paragraphs):

11.1 the Company shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Agreement, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Customer's loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and

11.2 whenever the Agreement (including these paragraphs) provides that any allowance is to be made against Charges, such allowance shall be the Customer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of Charges which would otherwise be or become due if the allowance in question had not been made.

12 Customer's Responsibility For Loss And Damage

12.1 For the avoidance of doubt it is hereby declared and agreed that nothing in this paragraph 12 affects the operation of paragraphs 2, 3, 7, and 8 of this Schedule 3.

12.2 For the duration of the Hire Period (which for the avoidance of doubt includes the time Plant is left at Service Address during a Holiday Period) the Customer shall, subject to the provisions referred to in sub-paragraph 12.1 make good to the Company all loss of or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in paragraph 8 herein, and shall also fully and completely indemnify the Company and any personnel supplied by the Company in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period, and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Plant, Idle Time Charges shall be continued until the settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or Idle Time Charges can be reinstated from the date of that agreement. Should Idle Time Charges be re-instated, the agreed settlement figure remains payable in full.

12.3 Notwithstanding 12.1 and 12.2 the Customer shall not be responsible for damage, loss or injury:

12.3.1 prior to delivery of any Plant to the Service Address (or, where the Service Address is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving such highway) where the Plant is in transit by transport of the Company or as otherwise arranged by the Company;

12.3.2 during the erection and/or dismantling of any Plant where such Plant requires to be completely erected / dismantled on Service Address, provided always that such erection / dismantling is under the exclusive control of the Company or his agent;

12.3.3 after the Plant has been removed from the Service Address and is in transit on a highway maintainable at the public expense (or where the Service Address is not immediately adjacent to a highway maintainable at the public expense after it has joined such highway) to the Company by transport of the Company or as otherwise arranged by the Company;

TERMS AND CONDITIONS

12.3.4 where the Plant is travelling to or from a Service Address on a highway maintainable at the public expense (or, where the Service Address is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Company.

13 Notice Of Accidents

13.1 If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Customer to the Company by telephone and confirmed in writing to the Company no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Customer is not bound to fully indemnify the Company, no admission of liability, offer, promise of payment or indemnity shall be made by the Customer without the Company's prior written permission.

14 Re-Hiring Etc.

14.1 Neither the Plant nor any part thereof shall be re-hired, sub-let, or lent to any third party without the prior written permission of the Company.

15 Change Of Service Address

15.1 The Plant shall not be moved from the Service Address to which it was delivered or consigned without the prior written permission of the Company.

16 Return Of Plant For Repairs

16.1 If during the Hire Period the Company decides that urgent repairs to the Plant are necessary then the Company may arrange for such repairs to be carried out on Service Address or at any location of its nomination.

16.2 In the event that urgent repairs to the Plant are necessary the Company shall be obliged to replace the Plant with similar Plant if available, the Company (but without prejudice to any of the provisions of paragraphs 8 and/or 12) paying all transport charges involved.

16.3 In the event of the Company being unable to replace the Plant it shall be entitled to terminate the Agreement forthwith (but without prejudice to any of the provisions of paragraphs 8 and/or 12) by giving written notice to the Customer. If such termination occurs:

16.3.1 within three (3) months from the commencement of the Hire Period, the Company (but without prejudice to any of the provisions of paragraphs 8 and/or 12) shall pay all transport charges involved; or

16.3.2 more than three (3) months from the commencement of the Hire Period, the Company (but without prejudice to any of the provisions of paragraphs 8 and/or 12) shall be liable only for the cost of reloading and return transport.

17 Basis Of Charging

17.1 The Customer shall render to the Company for each Working Week an accurate statement of the number of hours the Plant has worked each day. When any personnel, operator or driver is supplied by the Company, the Customer shall sign their time record sheets. The signature of the Customer's representative shall bind the Customer to accept the hours shown on the time records sheets.

17.2 Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of driver or operator supplied by the Company except where breakdown is due to acts or omissions of third parties and/or the Customer's misuse, misdirection or negligence, subject however to the provisions of paragraph 7 of this Schedule 3.

17.3 Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.

17.4 Plant shall be hired out either:

17.4.1 for a stated minimum number of hours per Working Day or per Working Week; or

17.4.2 without any qualification as to minimum hours. Odd days at the beginning and at the end of the Hire Period shall be charged pro rata.

17.5 Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of two (2) hours for any one (1) stoppage and any excess will be charged for at the appropriate Idle Time Charge.

TERMS AND CONDITIONS

17.6 In the case of Plant which is required to be dismantled for the purpose of transportation, if the Company agrees to a modification of the Charge for the period required for assembling on Service Address and dismantling upon completion of the Hire Period, such modification of the Charge and the Hire Period for which it shall apply shall be stated in Appendix A.

18 Charges

18.1 If hired without qualification to hours where Plant is charged:

18.1.1 on a daily basis, the full daily rate will be charged on a daily basis irrespective of the hours worked except in the case of breakdown for which the Company is responsible, when the actual hours worked will be charged pro rata of the average Working Day. No Charge shall be made for Saturday and/or Sunday unless the Plant is actually worked; or

18.1.2 on a weekly or monthly basis, the weekly or monthly rate shall be charged irrespective of the number of hours worked, except in the case of breakdown for which the Company is responsible when an allowance pro rata of the agreed weekly rate or pro rata of the agreed monthly rate will be made for each full Working Day broken down calculated to the nearest half Working Day.

18.2 If Plant is hired by the week or the hour for a minimum of 39 hours per week, the full hire for the Minimum Term in the Agreement will be charged and an additional pro rata Charge will be made for hours worked in excess of such minimum period. Allowance will be made for breakdowns up to 8 hours except on Fridays when the allowance will be up to 7 hours providing always that where the actual hours worked are in excess of the minimum period less breakdown time, the actual hours worked shall be chargeable. Idle Time Charges for this purpose shall be treated as actual working time. The minimum Working Week of 39 hours shall be reduced by 8 hours Monday to Thursday and 7 hours Friday for each Holiday Period occurring in such Working Week, provided that the Plant is not in use during such Holiday Period.

18.3 Where Charges are deemed to be "all-in" for the Minimum Term, they shall be as defined in the Agreement and in accordance with the hire rates and terms contained therein, subject to the provisions of paragraph 18.5.

18.4 When the Plant is prevented from working for a complete Working Week, the "**Idle Time Charges**" shall be two thirds of the hire rate or such other Idle Time rate as is agreed in writing by the Company for the period during which the Plant is not in use. If the Plant works for any time during the Working Day then the whole of that Working Day shall be charged as working time. In any case no period less than one (1) Working Day shall be reckoned as Idle Time save for as provided for in paragraph 17.5. Where an "all-in" rate is charged, Idle Time is calculated on the machine element only. Full rate will be charged for the operator.

18.5 All chargeable items shall be paid by the Customer at the rates set out in the Agreement save that any subsequent increases before and/or during the Hire Period arising from awards under any wage agreements and/or from increases in the Company's statutory contribution shall be charged as additions at cost by the Company and shall be admitted and paid by the Customer.

19 Transport Of Plant and Hire Period

19.1 The Hire Period shall commence from the time when the Plant leaves the Company's depot or place where last employed and shall continue until the Plant is received back at the Company's named depot or other agreed location but an allowance shall be made of not more than one (1) day's Charge each way for travelling time. If the Plant is used on the day of travelling, full hire rates shall be paid for the period of use on that day. If more than one day is properly and unavoidably occupied in transporting the Plant, an Idle Time Charge shall be payable for such extra time, provided that where Plant is hired for a total period of less than one (1) Working Week, the full hire rate shall be paid from the date of despatch to the date of return to the Company's named depot or other agreed location.

19.2 If the Plant is not made available for collection as agreed between the Parties, such Plant shall be deemed with immediate effect to be placed back on hire. The Customer shall be responsible for the safekeeping of the Plant in accordance with paragraph 12, and for all the reasonable costs and expenses incurred by the Company in seeking to collect such Plant.

19.3 Upon the completion of the Hire Period, the Customer shall clean and where necessary, decontaminate the Plant. All fuel and contaminants will be removed from bunds, storage tanks and bowsers. The Customer shall be liable for any costs, liabilities and expenses incurred by the Company should the Customer fail to comply with this paragraph.

TERMS AND CONDITIONS

20 **Customer's Liability During The Notice Of Termination Of Agreement**

- 20.1 Notwithstanding clause 9, where the Hire Period is indeterminate or having been defined becomes indeterminate the Agreement shall be terminable by seven (7) days' notice in writing given by either Party to the other except in cases where the Plant has been lost or damaged. Notwithstanding that the Company may have agreed to accept less than 7 days' notice of termination, the Customer's obligations under paragraph 12 shall continue until the Plant is returned to the Company in accordance with paragraph 21.4 or until the Company has collected the Plant within the 7 days following the acceptance of short notice. Oral notice given by the Customer to the Company's driver or operator shall not be deemed to constitute compliance with the provisions of this paragraph.
- 20.2 Without prejudice to paragraph 20.1, should the Customer fail to make the Plant available for collection by the Company before the end of the 7 day notice, the Customer's obligations under paragraph 12 shall continue for a further three (3) days or until such time as the Plant is made available for collection and the Company has collected the Plant. For the avoidance of doubt, where the Customer gives a notice pursuant to paragraph 20.1 but subsequently and with the consent of the Company, withdraws such notice, the obligations of paragraph 12 shall continue to apply and the requirements of paragraph 20 will apply to any later termination of the Agreement.
- 20.3 If the Customer terminates the Agreement before the Hire Period commences, then the Customer is liable for all reasonable costs and charges incurred by the Company or to which the Company is committed at the time of termination.

21 **Expenses**

- 21.1 Travelling time, fares and similar expenses for drivers, operators and any person supplied by the Company, incurred at the beginning and end of the Hire Period and where appropriate return fare of the driver, operator and any person supplied by the Company to his home will be chargeable at cost. No charge shall be made by the Company for any such expenses incurred by other employees of the Company for the purpose of servicing, repair or maintenance of Plant, unless necessitated by the Customer's negligence, misdirection or misuse of the Plant.
- 21.2 Fuel, oil and grease shall, when supplied by the Company, be charged at net cost or an agreed estimate of net cost, and when supplied by the Customer, shall be of a grade or type specified by the Company. The Customer shall be solely responsible for all damages, losses, costs and expenses incurred by the Company if the Customer uses the wrong fuel, oil or grease.
- 21.3 The cost of re-sharpening or replacement of drill bits, blades and other ancillary items shall be borne by the Customer.
- 21.4 The Customer shall pay the cost of and if required by the Company, arrange transport of, the Plant from the Company's depot or other agreed location to the Service Address and return to the Company's named depot or other agreed location on completion of the Hire Period.

22 **Company's Name Plates**

- 22.1 The Customer shall not remove, deface or cover up the Company's name plate or mark on the Plant indicating that it is his property, without the prior written permission of the Company.

23 **Government Regulations**

- 23.1 The Customer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work, etc. Act and observance of the Road Traffic Acts should they apply, including the cost of road fund licences and any insurances made necessary thereby, save that if and during such time as the Plant is travelling, whether for full or part journey from Company to Service Address and Service Address to Company under its own power with a driver supplied by the Company, the Company and not the Customer shall be responsible as aforesaid.
- 23.2 The Customer shall indemnify the Company against any charges or fines that the Company may become liable for as a result of the operation of the Plant during the Hire Period.

24 **Protection Of Company's Rights**

- 24.1 The Customer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant except as provided under paragraph 14 and shall protect the same against distress, execution or seizure and shall indemnify the Company against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition.
- 24.2 Notwithstanding clauses 9.2, 9.3 and 9.4, the Company may terminate the Agreement forthwith by written notice to the Customer if one (1) or more of the following events occur:

TERMS AND CONDITIONS

- 24.2.1 the Customer defaults in punctual payment of any sum due to the Company payable pursuant to these conditions;
- 24.2.2 the Customer fails to observe and perform the terms and conditions of the Agreement;
- 24.2.3 the Customer suffers, or the Company reasonably believes that the Customer shall suffer, any distress or execution to be levied against him;
- 24.2.4 the Customer makes or proposes to make any arrangement with his creditors or becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force; or
- 24.2.5 the Customer does or causes to be done or permit or suffer any act or thing whereby the Company's rights in the Plant may be prejudiced or put into jeopardy.
- 24.3 In the event of termination under sub-paragraph 24.2 above:
- 24.3.1 the Customer must give the Company or his agents, immediate unobstructed access to recover the Plant; and
- 24.3.2 the Company shall be entitled to claim the Charges outstanding as at the date of termination of the hire under this paragraph 24 and return transport charges under paragraph 21.4.
- 24.4 The rights under sub-paragraph 24.2 and 24.3 above:
- 24.4.1 may be exercised notwithstanding that the Company may have waived some previous default or matter of the same or a like nature;
- 24.4.2 shall not affect the Company's right to claim damages for breach of Agreement or recover any sums due under the Agreement as a debt.
- 24.5 Notwithstanding clause 4.7, if the Customer does not make payment of a sum by the final date on which payment is due to be made, the Company has the right to suspend performance of its obligations under the Agreement. The right to suspend may not be exercised without first giving to the Customer at least seven (7) days' notice in writing of the Company's intention to suspend performance, stating the ground or grounds on which the Company intends to suspend performance. The right to suspend performance will cease when the Customer makes payment in full of the amount due.

25 **Changes In Normal Working Week**

The foregoing provisions have been framed upon the basis of the Customer working a five (5) day week of 39 hours; it is hereby agreed that in the event of:

- 25.1 there being any agreed change in the normal weekly hours in the industry in which the Customer is engaged; or,
- 25.2 the Agreement being made with reference to a five (5) day week of other than 39 hours,

the definitions of Working Day and Working Week, and paragraphs 17.3 and 17.4, 18.1 (in regard to breakdown allowance and reduction for statutory holidays) and 18.2 shall be deemed to be modified conformably and in the event of an alteration in the normal weekly working hours in the said industry the "Hire Rates and Terms" of Plant hired for a minimum weekly or daily period shall be varied pro rata.

TERMS AND CONDITIONS

Appendix A

Commercial Details