

## **VEHICLE HIRE FORM**

Subject to our General Terms and Conditions of Vehicle Hire

### **Contract No:**

<b>The Company</b>	<b>Ashcourt Group Limited and/or any of the following companies referenced in the General Terms and Conditions of Vehicle Hire</b>
Hirer's Name/ Billing Details	
Address	
Post Code	

<b>Delivery Location</b>	
Address	
Post Code	
With Operator	Yes/ No

Hirers Order No.	
Contact Name	
Contact Number	

**Signed** .....

**Name.** .....

**Position** .....

Authorised to sign on behalf of .....(Hirer) hereby confirm that I have inspected the Vehicle listed on the Schedule and found it to be in good working order and fit for the purpose for which it is intended to be used by the Hirer.

**Schedule of Vehicle(s)**

The Vehicle value is the full replacement value given for insurance purposes only and does not include VAT. It is the Hirer's responsibility to insure the Vehicle to this value if being supplied without an Operator. Your attention is drawn to clause 6 Insurance and 13 Limitation of Liability of our General Terms and Conditions of Vehicle Hire.

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## THE ASHCOURT GROUP

### GENERAL TERMS & CONDITIONS OF VEHICLE HIRE

#### 1. INTRODUCTION

- 1.1 The Hirer shall hire the Plant from the Ashcourt Group Limited or any of the divisions which form part of the Ashcourt Group under these General Terms and Conditions of Vehicle Hire.

#### 2. DEFINITIONS:

**"the Company"**

means the Ashcourt Group Limited, a company registered in England and Wales under company number 11588892 whose registered office is at Foster Street, Hull, United Kingdom, HU8 8BT and/or any of the following divisions each with the same registered office address which has agreed to Hire the Plant to the Hirer, whether with or without an Operator :

- Ashcourt Plant Limited registered in England and Wales with company number 11226554
- Ashcourt Contracts Limited registered in England and Wales with company number 06856807
- Ashcourt Aggregates Limited registered in England and Wales with company number 11277646;
- Ashcourt Concrete Limited registered in England and Wales with company number 09549130;
- Ashcourt (Durham & Tees Valley) Limited registered in England and Wales with company number 01480171;
- Ashcourt (Lincolnshire) Limited registered in England and Wales with company number 01844065;
- Ashcourt Fuels Limited registered in England and Wales with company number 11086783; and
- Ashcourt Highways Limited registered in England and Wales with company number 11245769;
- BGH (Hull) Limited registered in England and Wales with company number 08937897; and
- Simpson Quarries Limited registered in England and Wales with company number 04594315.

**"Working Hours"**

means the hours of 8am-5pm on Monday to Friday (excluding Bank Holidays) together a Working Week.

**"Commencement Date"**

means the date the Hirer takes Delivery of the Vehicle.

**"Contract"**

means the Contract between the Company and the Hirer (being the Parties) for the Hire of the Vehicle in accordance with these Hire Terms and the Hire Form, the Schedule of Vehicles and any Quotation.

<b>"Delivery/Collection Charges"</b>	are as set out in the Quotation.
<b>"Delivery"</b>	means the transfer of physical possession of the Vehicle to the Hirer by collection from the Company, upon handover at the Delivery Location or when the Vehicle arrives at the Delivery Location with the Vehicle.
<b>"Delivery Location"</b>	means the location set out in the Hire Form.
<b>"Hire Charges"</b>	includes the charges for the Hire Period in accordance with clause 9 and all charges for repairs or maintenance and consumables pursuant to clause 10.1.
<b>"Hire Form"</b>	the form attached to these Hire terms both in physical and electronic format including the Schedule of Plant.
<b>"Hire Period"</b>	(subject to clause 9) the Minimum Term of Hire set out in the Hire Form starting on the Commencement Date plus any further period of hire until the Hire is terminated by either party pursuant to clause 11.
<b>"Hire Rate(s)"</b>	is the monetary rate for the Hire Period set out in the Hire Form and is subject to VAT at the prevailing rate.
<b>"Hire Terms"</b>	are these General Terms and Conditions of Vehicle Hire, the Hire Form and all its clauses and undertakings which apply to the Contract.
<b>"Hire"</b>	means the hire of the Vehicle in accordance with the Contract.
<b>"Hirer"</b>	is the company, firm or person taking the Vehicle on Hire and this expression includes their successors or representatives. The Company does not hire Plant to Consumers.
<b>"Maximum Hours Use"</b>	means a maximum of 10 hours per Working Day.
<b>"Quotation"</b>	means the Company's Quotation.
<b>"Risk Period"</b>	see clause 6.2.
<b>"Vehicle"</b>	includes any grab wagon, tipper, roadsweeper or equipment listed in the Hire Form or part thereof, including any attachments, accessories, fittings or replacements and all related accessories, manufacturer's handbook and the manual provided for it.

### 3. BASIS OF CONTRACT

- 3.1 These Hire Terms apply to the Contract to the exclusion of any other terms that the Hirer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 3.2 Any variation or purported variation of these Hire Terms will be of no effect unless set out expressly in the Hire Form or agreed in writing and signed by a director of the Company.
- 3.3 The Contract comprising the Hire Form and incorporating these Hire Terms constitutes the entire agreement between the Company and the Hirer. The Hirer

acknowledges that it has not relied on any statement, promise or representation made or given by the Company which is not set out on the Hire Form.

- 3.4 Any Quotation by the Company shall not constitute an offer. A Quotation is only valid for a period of 30 days from its date of issue

#### **4. HIRE**

- 4.1 The Company shall Hire the Vehicle to the Hirer for the Hire Period on the terms of the Contract or as otherwise specified in the Quotation:

(a) for a stated minimum number of hours per Working Day or per Working Week or,

(b) without any qualification as to Minimum Hours

and thereafter until notice to terminate is given pursuant to clause 11.1.

#### **5. COMMENCEMENT OF HIRE**

- 5.1 Subject to the other provisions of the Contract, the Company, their representative or the Operator will deliver the Vehicle to the Hirer and collect it from the Hirer. The Company will use all reasonable endeavours to effect Delivery by the date and time set out in the Hire Form as the date the Hire Period is to commence but time of delivery shall not be of the essence and Delivery dates stated in the Hire Form shall be approximate only.

- 5.2 The Hire Period will start upon Delivery and continue until the Vehicle is received back at the Company's named depot or other agreed location. An allowance shall be made at not more than one day Hire charges for return travelling time unless the Vehicle is used on the day of travelling when full Hire Rates shall be paid for the period of use on that day.

- 5.3 Hire Charges and Operator Charges will commence on Delivery, unless stated otherwise on the Hire Form. Unless to be collected by the Hirer, the Hirer shall ensure the Company's access to the Delivery Location to enable Delivery.

- 5.4 The Hirer shall procure that a duly authorised representative (over 18 years of age) shall be present at Delivery. Acceptance of Delivery by such representative (by signing the Hire Form) shall constitute conclusive evidence that the Hirer has inspected the Vehicle and has found it to be in good working order and fit for the purpose for which it is intended to be used by the Hirer with or without an Operator (save as regards any latent defects not reasonably apparent on inspection) and implies acceptance of these Hire Terms (unless otherwise previously agreed in writing).

- 5.5 The Hirer shall be responsible for the unloading and loading of the Vehicle at the Delivery Location from the Vehicle unless the Vehicle has been driven to the Delivery Location by the Operator.

- 5.6 The Hirer shall ensure that at the time of delivery and collection of the Vehicle by the Company, that a safe and proper route from a metallised highway is available on firm ground for the Vehicle and that there is the space necessary to give the Vehicle delivering the Vehicle sufficient access to effect delivery collection and removal including manoeuvring space for the Vehicle. In the event that it proves impractical to deliver or collect Vehicle to the Delivery Location because of inadequate access or unsuitable ground conditions, the Hirer shall be liable to pay the Company additional charges for the abortive delivery or collection costs incurred.

- 5.7 Subject to the compliance of the Hirer with the Contract and the Operator's instructions, the Company will allow the Hirer to have quiet enjoyment of the Vehicle during the Hire Period.

## 6. OWNERSHIP, RISK AND INSURANCE

- 6.1 The Vehicle shall at all times remain the property of the Company and the Hirer shall have no right, title or interest in or to the Vehicle (save the right to possession and use of the Vehicle subject to these Hire Terms).
- 6.2 The full responsibility for risk of loss, theft, damage or destruction of the Vehicle Hired shall pass to the Hirer on Delivery. The Vehicle shall remain at the sole risk of the Hirer during the Hire Period and any such further term during which the Vehicle is in the possession, custody or control of the Hirer (including for example while the Vehicle is at the Delivery Location prior to the commencement of the Hire Period and after the end Hire Period unless awaiting collection) ("**Risk Period**") until such time as the Vehicle is collected by or redelivered to the Company.
- 6.3 The Hirer must take out insurance to cover the risk of loss, damage or destruction to the Vehicle to the Vehicle Value set out in the Schedule of Vehicle when the Hire of the Vehicle is without an Operator and the Hirer must on request supply full details of the insurance cover obtained to the Company.
- 6.4 The Hirer shall give immediate written notice to the Company in the event of any loss, accident or damage to any item of the Vehicle arising out of or in connection with the Hirer's possession or use of the Vehicle however caused. An immediate verbal notification must be confirmed in writing.
- 6.5 Where the Hirer is responsible for loss, damage or destruction of the Plant, and has submitted a claim to their own insurers, he will supply a copy of his claim to the Company. The Hirer will keep the Company updated on a weekly basis as to the progress of such claim and supply copies of all correspondence to and from the Insurers.
- 6.6 The Company will fully insure the Vehicle when supplied to the Hirer with an Operator.

## 7. COMPANY OBLIGATIONS

- 7.1 The Company
- (a) shall ensure at the commencement of the Hire Period that each item of the Vehicle is of sound construction and in good working order, properly maintained, inspected and compliant with any current and relevant standards or regulations;
  - (b) will at its own expense service and maintain the Vehicle, carry out any mechanical repairs to the Vehicle which in the Company's opinion have become necessary as a result of fair wear and tear and replace any wearing parts as quickly as is reasonably possible and to suit the convenience of the Hirer (so far as is reasonably possible during Working hours). The Company does not operate a 24/7 service and any maintenance servicing or repairs will be carried out during Working Hours at the Company's workshop premises unless otherwise agreed.
  - (c) will provide where any defect is the fault of the Company and the breakdown is for 72 hours or more substitute Vehicle without additional charge to the Hirer.
- 7.2 The Hirer shall indemnify the Company to the extent not fully covered by insurance (including where the Hirer fails to effect insurance in accordance with these Hire Terms) for loss, damage or destruction caused to the Vehicle during the Risk Period whether by the Hirer or Third parties which is the Hirers responsibility under these Hire Terms and loss of income from that Vehicle during any period during which the Vehicle is unavailable for hire. Accordingly, the Hire Period shall be deemed to be

extended until the Vehicle is fully repaired, reinstated or the Company receives the full replacement value of the Vehicle as stated in the Schedule of Plant.

7.3 If the Vehicle is damaged by the Hirer during the Hire Period and capable of repair, then the Company shall be entitled to collect and remove the Vehicle for the repair. The repair will be at the cost of the Hirer and the Hire Charges shall continue whilst the repair is being carried out. Any substitute Vehicle provided by the Company whilst the original Vehicle is being repaired will be at an extra Hire Charge to the Hirer. At the discretion of the Company and provided that the damage requiring repair is not at risk of causing Health and Safety issues, the Company may elect to carry out the repairs at the end of the original Hire Period. In the alternative to repair the Company may level a damage charge. The Hirer will also be responsible for the Collection and Delivery charges.

7.4 The Hirer will be liable to the Company for any damage caused to the Vehicle arising from defects in the Vehicle which occurred whilst being operated by the Hirer.

## **8. HIRERS OBLIGATIONS**

8.1 The Vehicle shall remain the property of the Company but at all times after Delivery shall be under the direction and control and at the risk of the Hirer only.

8.2 The Hirer undertakes during the Risk Period:

- (a) to keep the Vehicle secure at all times and when not in use to ensure that the Vehicle is kept locked in a secure compound and shall not suffer the Vehicle to be confiscated seized or taken out of its control under any distress execution or other legal process and shall indemnify the Company on removal by any third party for any loss or expense arising out of the same.
- (b) provide at its own expense all necessary fuel, oil, grease and other relevant materials to carry out the required daily service checks as recommended by the Operator or any of the Vehicle manuals. The Hirer will ensure that regular cleaning takes place and that the correct adjustments, checks and fluid levels are maintained as per the Operator's instructions, including the maintenance of correct tyre pressures and tightening of wheel nuts.
- (c) to ensure that the Hirer carries out daily service checks and walk round inspections to the Vehicle and takes such other steps (including compliance with all safety and usage instructions) as may be necessary to ensure, so far as is reasonably practicable, that the Vehicle is at all times safe and without risk to health when it is being used (cleaned) or maintained by a person at work; and
- (d) to be responsible for the reimbursement of the cost to the Company of replacing or repairing all tyre punctures or damaged tyres occurring during the Hire Period with tyres of an equivalent standard and specification.
- (e) to notify the Company promptly if the Vehicle breaks down or fails to work properly, or if any repairs or replacements are necessary.
- (f) to make no alteration to any item of the Vehicle and not to remove any existing component(s) (including tyres) from the Vehicle without the prior written consent of the Company, unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to any of the Vehicle by the Hirer shall vest in the Company immediately upon installation;

- (g) to keep the Company fully informed of all material matters relating to the Plant;
- (h) at all times keep all items of the Vehicle in the possession or control of the Hirer and keep the Company informed of its location;
- (i) to permit the Company or its duly authorised representative to inspect repair or replace the Vehicle at all reasonable times and for such purpose to enter upon the Delivery Location or any premises at which the Vehicle may be located, and shall grant reasonable access and facilities for such inspection;
- (j) save as declared in writing prior to Hire not, without the prior written consent of the Company, part with control of (including for the purpose of repair or maintenance), re-hire, sell or offer for sale, sub-let or lend the Vehicle or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (k) not to remove, obscure, deface or obliterate any safety guards, safety decals or identification markings on the Vehicle and to notify the Company under such circumstances and replace immediately at their own expense.
- (l) to ensure that the Vehicle is run in compliance with all applicable laws, including, where applicable, goods vehicle operator licensing. Not to use the Vehicle for an unlawful purpose;
- (m) not to use the Vehicle in contravention of any applicable laws on drivers' hours and record keeping.
- (n) to clean and where necessary decontaminate the Vehicle upon completion of the Hire Period prior to collection or return to the Company

8.3 Where specific consent for road use is given or agreed and relates to an item(s) of Vehicle not previously used for that purpose, the Hirer will bear the costs of registration, road fund licence and the affixing of number plates.

8.4 The Hirer accepts:

- (a) full liability (including fines and other penalties) in respect of any offences which may be committed in connection with the Vehicle during the Hire Period including but not limited to:
  - i. any road traffic offence;
  - ii. breach of any parking restrictions;
  - iii. breach of any loading conditions.
- (b) Full liability for and agrees to indemnify the Company against any claims which may be made against the Company pursuant to condition 8.4(a) and the Hirer hereby irrevocably authorises the Company to notify such authorities and enforcement bodies of the Hirer's details to effect a transfer of liability and to charge the Hirer an administration fee of £50 for administering such claims and/or fines.

8.5 The Hirer acknowledges that the Vehicle being hired may cause damage to the ground (such as cracked surfaces) or damage to drains, manholes or sewers. The Hirer accepts full liability for any such damage or claim made against the Company pursuant to this condition 8.7. The Hirer shall be responsible for rectifying any such damage caused to the Hirer's property or property belonging to another.

8.6 Upon the completion of the Hire Period, the Hirer shall clean and where necessary, decontaminate the Plant. All fuel and contaminants will be removed from bunds,



storage tanks and bowzers. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Company should the Hirer fail to comply with this clause.

- 8.7 At the end of the Hire the Vehicle will be inspected by the Company for any damage to it, and the Hirer will be fully responsible for all damage to the Vehicle (fair wear and tear excepted) in accordance with clause 7.2 and 7.3.

## **9. HIRE CHARGES**

- 9.1 Unless otherwise stated on the Hire Form, or where the parties have agreed payment by Monthly Direct Debit the Company will render invoice(s) at the end of each month of the Hire Period, for payment within 30 days of invoice. Delivery/Collection Charges are not included in the Hire Rates and will be charged in the first months hire invoice, or following return of the Vehicle after inspection by the Company and payment due accordingly.
- 9.2 When the Hirer has entered into a Contract for Hire for a Minimum Hire Period in excess of 3 months duration, the Hirer may be requested by the Company to arrange a Monthly Standing Order to cover the payment of the Hire Charges including any Operator Charges. Any other charges to be rendered on a monthly basis as per clause 9.1
- 9.3 **Idle Time** - When the Vehicle is prevented from working for a complete Working Week, the Hire 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 Vehicle is not in use. If the Vehicle 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 Working Day shall be reckoned as idle time save for as provided for in clause 4.1. Where an "All-In" rate is charged, idle time is calculated on the Vehicle element only. Full rate will be charged for the Operator.
- 9.4 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 the Vehicle, unless necessitated by the Hirer's negligence, misdirection or misuse of the Vehicle.
- 9.5 **Vehicle Hired On A Daily Basis Without Qualification As To Hours** - The full daily rate set out in the Quotation 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 Hire Charge shall be made for Saturday and / or Sunday unless the Vehicle is actually worked.
- 9.6 **Vehicle Hired By The Week Or Month Without Qualification As To Hours** - 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.
- 9.7 **Vehicle Hired By The Week Or The Hour For A Minimum Of 39 Hours Per Week** - The full Hire Charge for the Minimum Hire Period in the Quotation or Contract 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 Hire Period less breakdown time, the actual hours worked shall be chargeable. Idle time 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

Bank Holiday occurring in such Working Week, provided that the Vehicle is not in use during such Bank Holidays

- 9.8 **"All-In" Rates** - Where "All-In" rates are set out in the Quotation or Contract the Minimum Hire Period shall be as defined in the Contract and in accordance with the Hire Rates and terms contained therein, subject to the provisions of clause 9.5.
- 9.9 Odd days at the beginning and at the end of the Hire Period shall be charged pro rata. Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one stoppage and any excess will be charged for at the appropriate idle time rates.
- 9.10 Full allowance will be made for breakdown periods resulting from mechanical or electrical faults except where breakdown is due to acts or omissions of third parties and / or the Hirer's misuse, misdirection or negligence, Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.
- 9.11 Immediately upon the Hire being terminated by the Company in accordance with clause 11, the Hirer will pay to the Company all monies due to the Company including:
- (a) the Hire Charges for the Minimum Hire Period (even if that has not expired prior to such termination) plus any additional period of Hire which is outstanding;
  - (b) damage charges pursuant to clause 7.2, 7.3 and 7.4;
  - (c) Collection/ Delivery Charges and such other costs as are incurred by the Company for the seizure or removal of the Vehicle; and
  - (d) all other costs and charges for which the Hirer is responsible under these Hire Terms.

## 10. **PAYMENT**

- 10.1 The Hirer will also pay promptly and in any event within 14-days all charges incurred for damage, repairs and replacements, maintenance, fuel, oil, grease and other consumables for which they are responsible under these Hire Terms.
- 10.2 All charges stated in the Contract (including but not limited to) the Hire Charges Delivery/Collection Charges are stated exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.
- 10.3 All amounts due to the Company by the Hirer 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).
- 10.4 If the Hirer fails to make any payment due to the Company under this Contract by the due date for payment, then, without limiting the Company's right to terminate pursuant to clause 10, the Company is entitled to charge the Hirer:-
- (a) interest on the overdue amount at the base rate of the Bank of England plus 8% per annum. Such interest shall accrue on a daily basis from the due date until the date the overdue amount is credited in cleared funds to the Company's bank account and shall accrue at such rate after as well as before any judgment
  - (b) an administration fee of £50; and
- any further costs incurred by the Company in the collection of the overdue balance all of which shall be paid together with the overdue amounts.

## **11. TERMINATION OF HIRE**

- 11.1 After the Minimum Hire Period as set out in the Hire Form the Vehicle Hire may be terminated by either party giving the other 1 working days' notice. If the Hirer cancels the booking of any of the Vehicle or returns any of the Vehicle to the Company within the Minimum Hire Period or gives notice to terminate within the Minimum Hire Period the charges for the Minimum Hire period shall still be payable by the Hirer.
- 11.2 The Company shall be entitled to terminate the Hire immediately, without prejudice to the other provisions of these Hire Terms, should the Hirer:
- (a) fail to pay any Hire Charges or other charges for which the Hirer is responsible under these Hire Terms for more than 30 days from invoice
  - (b) fail to observe and perform any of the other terms and conditions of the Contract
  - (c) permit, cause or suffer anything to be done which prejudices or puts into jeopardy any item of the Vehicle or the Company's rights in the Plant
  - (d) take any steps or action in connection with its entering into administration or any composition with creditors (other than in relation to a solvent restructuring) being wound up or ceasing to carry on business
  - (e) in the Company's reasonable opinion be unable to fulfil its financial obligations under the Contract.

## **12. CONSEQUENCES OF TERMINATION.**

- 12.1 If the Company terminates the Hire in accordance with clause 11.2 the Company shall be entitled without notice and at the Hirer's expense to seize or remove the Vehicle from the possession of the Hirer, for which purpose it will be lawful for the Company to enter upon the Delivery Location or any other premises where the Vehicle may be located for these purposes, and the Hirer consents to such entry and shall secure permission for such entry to any third party premises where any of the Vehicle is located.
- 12.2 The Hirer shall (without prejudice to the Company's other rights and remedies) forthwith pay on demand all Charges as set out in clause 9.14 together with accrued interest, as per clause 10.4.
- 12.3 Termination or expiry of the Contract with the Hirer shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry.

## **13. LIMITATION OF LIABILITY**

- 13.1 The Company shall not be liable to the Hirer for any loss, damage, destruction of property, personal injury or death of the Hirer or its employees or contractors or any other person in any way caused or relating to the Vehicle or its use, except where such events directly result from the negligence of the Company or its employees. The Company shall not be liable to the Hirer for any loss or damage caused by delays in Delivery or non-delivery of the Vehicle, or by delays in repairing or replacing the Vehicle if such delay results from events circumstances or causes beyond the reasonable control of the Company (Including but without limit, industrial disputes, fire, flood, government acts, public holidays, non-availability of parts).
- 13.2 The Hirer acknowledges that the Company shall not be liable for any losses, actual or anticipated to be suffered by the Hirer arising or resulting from :
- (a) Loss of profits
  - (b) Loss of contracts

- (c) Losses resulting from penalty clauses imposed on the Hirer under any agreement entered into by the Hirer and any third party
  - (d) Any loss of business or income during any period during which the Vehicle is unavailable for use during the Hire Period whether due to breakages or damage
- 13.3 The Company's liability shall be limited to crediting or refunding to the Hirer the Hire Charges during the Minimum Term of Hire for any of the Vehicle which is unusable due to the default of the Company but subject to clause 13.4 the Company's total liability to the Hirer under this Contract shall not in any event exceed an amount equal to the aggregate of the Hire Charges paid or otherwise payable under this Contract.
- 13.4 Nothing in this Contract limits any liability which cannot be legally limited including but not limited to liability for death or personal injury caused by negligence.

#### **14. THIRD PARTY RIGHTS**

- 14.1 The Hirer may not assign, sub contract or transfer any of its rights and obligations under this Agreement.
- 14.2 No one other than a party to this agreement shall have any right to enforce any of its terms.

#### **15. NOTICES**

- 15.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be:
  - (a) 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
  - (b) sent by email to the hire coordinator at [info@ashcourt.com](mailto:info@ashcourt.com)
- 15.2 Any notice or communication shall be deemed to have been received:
  - (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (b) 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 at the time recorded by the delivery service;
  - (c) if sent by email, at 9.00 am on the next Business Day after transmission.
- 15.3 This clause 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. For the purposes of this clause, "writing" shall **not** include e-mail.

#### **16. RIGHTS AND REMEDIES**

- 16.1 Except as expressly provided in these Hire Terms, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **17. SEVERANCE**

- 17.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17.2 If one party gives notice to the other of the possibility that any provision or part-provision of the Contract or these Hire Terms is invalid, illegal or unenforceable, the Company and the Hirer shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**18. WAIVER**

18.1 No failure or delay by a party to exercise any right or remedy provided under these Hire Terms conditions or by law shall constitute a waiver of that or any other right or remedy.

**19. GOVERNING LAW**

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

**21. JURISDICTION**

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

Signed: \_\_\_\_\_

(for and on behalf of the Company)

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

(for and on behalf of Hirer)

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Hirer to sign and retain one copy and return second copy to the Company.**

## THE ASHCOURT GROUP

### TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

#### 1. INTRODUCTION

- 1.1 This Agreement sets out the terms and conditions upon which the Company or any of the divisions which form part of the Company has agreed to supply the Goods and/or provide the Services (as applicable) to the Customer.

#### 2. DEFINITIONS

**"Additional Terms"** means the additional terms relating to the sale of certain Goods and/or Services which are referred to in the Company's Quotation and/or the Order Confirmation which shall be incorporated into these Conditions and which apply only to the contract with the Company named in them

**"the Company"** means Ashcourt Group Limited, a company registered in England and Wales under company number 11588892 whose registered office is at Foster Street, Hull, United Kingdom, HU8 8BT or any of the following companies which has agreed to provide the Goods and/or Services to the Customer:

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- Ashcourt Concrete Limited registered in England and Wales with company number 09549130;
- Ashcourt (Durham & Tees Valley) Limited registered in England and Wales with company number 01480171;
- Ashcourt (Lincolnshire) Limited registered in England and Wales with company number 01844065;
- Ashcourt Fuels Limited registered in England and Wales with company number 11086783; and
- Ashcourt Highways Limited registered in England and Wales with company number 11245769;
- BGH (Hull) Limited registered in England and Wales with company number 08937897; and
- Simpson Quarries Limited registered in England and Wales with company number 04594315.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England and Wales, when banks in London are open for business.

**"Quotation"** means the documents issued by the Company which set out the Goods, the Services, the Deliverables, the Price and any

	Goods and/or Services, Specifications accepted by the Customer.
<b>"these Conditions"</b>	means these terms and conditions as amended from time to time in accordance with clause 17.8 including any Additional Terms.
<b>"Contract"</b>	means the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Conditions and the Additional Terms (if any).
<b>"Customer"</b>	means the person firm or company who purchases Goods or Services or Goods and Services from the Company.
<b>"Delivery Location"</b>	the location set out in the Quotation, Order Confirmation or such other location as the parties may agree in writing where the Goods and/or Services are to be delivered.
<b>"Deliverables"</b>	means the deliverables set out in the Quotation produced by the Company for the Customer.
<b>"Force Majeure Event"</b>	has the meaning in clause 16
<b>"Goods"</b>	means the goods (or any part of them) set out in the Quotation or if none the Order Confirmation.
<b>"Goods Specification"</b>	means any specification for the Goods, supplied by the Customer and including any relevant plans or drawings, that is agreed in writing by the Company or referred to in the Quotation.
<b>"Order"</b>	means the Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Quotation, as the case may be.
<b>"Order Confirmation"</b>	means an order confirmation document, or other written acceptance sent by the Company to the Customer, agreeing to fulfil an Order.
<b>"Price "</b>	has the meaning in clause 9.1
<b>"Services"</b>	means the services, including the Deliverables, to be supplied by the Company to the Customer as set out in the Company's Quotation other than the provision of Plant vehicles or other equipment (with or without an operator) which is governed by the Company's Standard Conditions of Hire.
<b>"Service Specification"</b>	means the description or specification for the Services provided in writing by the Company to the Customer or set out in the Quotation.

### **3. BASIS OF CONTRACT**

- 3.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 3.2 The Order shall only be deemed to be accepted when the Company issues an Order Confirmation to the Customer or if later the date of any performance of the Services or delivery of the Goods at the Delivery Location at which point and on which date the Contract shall come into existence.
- 3.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company's catalogues or brochures, website or Quotation are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 3.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, (whether issued before or after the date of these Conditions) or which are implied by law, trade custom, practice or course of dealing which are expressly excluded to the extent permitted by law without prejudice to the Company's right not to accept any Order. Any Quotation shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 3.5 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 3.6 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company.
- 3.7 Any Quotation is given subject to these Conditions.
- 3.8 This Agreement is divisible. Each Order hereunder:
  - 3.8.1 shall be deemed to arise from a separate contract; and
  - 3.8.2 shall be invoiced separately and any invoice for an Order shall be payable in full in accordance with the terms of payment provided for herein without reference to and notwithstanding any defect or default in the delivery of any other Order.

### **4. GOODS**

- 4.1 The Goods are described in the Quotation if expressly referred to in the Order Confirmation, as modified by any applicable Goods Specification.
- 4.2 The Customer shall indemnify the Company 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 reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Goods Specification. This clause 4.2 shall survive termination of the Contract.
- 4.3 The Company reserves the right to amend the Goods from the Goods Specification if required by any applicable statutory or regulatory requirement, and the Company shall notify the Customer in any such event, and such minor changes as are within normal tolerances or standards.



## 5. DELIVERY OF GOODS

- 5.1 The Company shall ensure that each delivery of the Goods is accompanied by a delivery note, which shows the date of the Contract, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Contract is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.2 Unless the Customer has agreed to collect the Goods from any of the Company's premises, the Company shall deliver the Goods to the Delivery Location at any time after the Company notifies the Customer that the Goods are ready.
- 5.3 The Customer shall provide the following in order to ensure the prompt discharge of the delivery of the Goods:
- 5.3.1 an authorised representative over the age of 18 to accept the Goods;
  - 5.3.2 all timely appropriate instructions concerning the delivery and the Delivery Location of the Goods;
  - 5.3.3 a safe and proper route from a metalled highway to the agreed Delivery Location and all applicable documents (such as required licences, consents and permissions where applicable);
  - 5.3.4 access at the Delivery Location to the point of discharge of the Goods including manoeuvring space for any delivery vehicle, office accommodation and other facilities as reasonably required by the Company to provide the Services;
  - 5.3.5 a Delivery Location that is compliant with health and safety legislation and regulations, licences or authorisations; and
  - 5.3.6 the necessary facilities and equipment to take delivery of the Goods.
- Failure to comply with this clause 5.3 may result in the Company refusing to make Delivery of the Goods and additional charges may be incurred.**
- 5.4 Given the nature of the Goods, the Customer will be deemed to have accepted the Goods as being in accordance with the Contract on the earliest to occur of the following, upon collection from the Company's premises, signature of the delivery note or the electronic PDA provided by the delivery driver upon completion of unloading of the Goods at the Delivery Location.
- 5.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6 At the anticipated time of delivery the Customer shall ensure that an authorised person is present at the agreed Delivery Location to accept the Goods and to sign the delivery note. Any signature will be legible and accompanied with a legible printed name.
- 5.7 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to

provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 5.8 If for any reason the Customer does not accept delivery of any of the Goods within the sum of 15 minutes of when the Goods arrive and available for discharge at the agreed Delivery Location, the Company reserves the right to charge the Customer for any period in excess of this time. The rate of such charge is to be determined by the Company and such rate is available from the Company upon request.
- 5.9 If the Customer fails to collect the Goods or accept delivery of the Goods at the Delivery Location within three Business Days of the Company notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods the Company may terminate the Contract and resell the Goods.
- 5.10 If ten Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and any abortive Delivery Costs and charge the Customer for any shortfall below the price of the Goods.
- 5.11 the Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.12 If the Customer has agreed to collect the Goods he shall do so within [3] Business Days of the Company notifying the Customer [in writing] that the Goods are ready for collection.

## **6. QUALITY OF GOODS**

- 6.1 The Company warrants that on delivery, the Goods shall (subject to clause 4.3) conform with their description and any applicable Goods Specification in all material respects.
- 6.2 The Company gives no warranty that Goods will be fit for any particular purpose unless the Company has been first advised in writing of all relevant factors relating to the purpose and the Company has confirmed in writing (signed by a Director) that the Goods will be suitable for that purpose.
- 6.3 Subject to clause 6.4, the Company shall, at its option replace at the Delivery Location, or refund the price actually paid by the Customer for those Goods which fail to comply with the warranty in clause 6.1 (or if applicable clause 6.2) but only if:
  - 6.3.1 the Customer gives notice in writing within 3 months of collection of the Goods by the Customer or delivery of the Goods to the Delivery Location that some or all of the Goods do not comply with the warranty set out in clause 6.1;
  - 6.3.2 the Company is given a reasonable opportunity of examining such Goods; and
  - 6.3.3 the Customer (if asked to do so by the Company) returns such Goods (or a sample) to the Company's place of business at the Company's cost.
- 6.4 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 (or if applicable clause 6.2) if:

- 6.4.1 the Customer makes any further use of Goods in the allegedly defective consignment of Goods after giving a notice in accordance with clause 6.3.1;
  - 6.4.2 the defect arises as a result of wilful damage, negligence on the part of the Customer, or abnormal storage or extreme weather or other abnormal working conditions for the Goods; or
  - 6.4.3 the Goods differ from the Goods Specification as a result of clause 4.3.
- 6.5 Except as provided in this clause 6, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1. The obligations of the Company under clause 6.1 shall for the avoidance of doubt not oblige the Company to make good any other loss or damage which may have been suffered or incurred by the Customer as a result of the Company's failing to have supplied the Goods in accordance with clause 6.1.
- 6.6 The terms of these Conditions shall apply to any replacement Goods supplied by the Company.
- 7. TITLE AND RISK**
- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
  - 7.2.1 the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due; and
  - 7.2.2 the Customer resells the Goods in the ordinary course of its business, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
  - 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - 7.3.2 not remove, deface or obscure any notice, mark or packaging on or relating to the Goods which identifies them as being the property of the Company;
  - 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
  - 7.3.4 notify the Company immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4;
  - 7.3.5 give the Company such information relating to the Goods as the Company may require from time to time; and
  - 7.3.6 give the Company or its authorised representative access to the place where the Goods are located.
- 7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
  - 7.4.1 it does so as principal and not as the Company's agent; and

- 7.4.2 title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, then, without limiting any other right or remedy the Company may have:
- 7.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 7.5.2 the Company may at any time:
- (a) require the Customer to deliver up all Goods in its possession that have not been resold, used or irrevocably incorporated into another product; and
  - (b) if the Customer fails to do so promptly, the Company enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **8. SUPPLY OF SERVICES**

- 8.1 The Company shall supply the Services to the Customer in accordance with the Quotation in all material respects and where there is no Quotation, the Company warrants to the Customer only that the Services will be provided using reasonable care and skill.
- 8.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Company reserves the right to amend the Quotation at any time prior to completion of the performance of the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 8.4 In the event that it becomes apparent during the performance of the Services or following their delivery that any of the Services have not been performed in accordance with clause 8.1, and the Customer shall have notified the Company that the Services are defective within a reasonable period after performance, the Company shall at its option re-perform the Services in question for the Customer free of charge as soon as reasonably practicable or refund the charges actually paid by the Customer for those Services.

## **9. PRICES, CHARGES AND PAYMENT**

- 9.1 The price for the Goods ("**the Price**"):
- 9.1.1 shall be the price set out in the Quotation; and
- 9.1.2 is stated ex-works and exclusive of all costs and charges of packaging, insurance of the Goods in transit and transport of the Goods, and any additional charges as otherwise provided for in these Conditions or the Additional Term as the liability of the Customer which shall be invoiced to the Customer as an additional charge.
- 9.2 The charges for the Services shall be calculated on a time and materials basis:-
- 9.2.1 calculated in accordance with the Company's daily fee rates, as set out in the Quotation; and

- 9.2.2 include any expenses reasonably incurred by the individuals whom the Company engages in connection with the performance of the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of Services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials utilised.
- 9.3 The Company reserves the right to:
- 9.3.1 increase the price of the Goods and/or Services and or the daily fee rate or other charges for the Services by giving notice to the Customer at any time before delivery of the Goods or completion of the performance of the Services, to reflect any increase in the cost of the Goods and/or Services to the Company that is due to:
- (a) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification or the Service Specification; or
  - (c) any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods and/or Services.
- 9.4 In respect of Goods, the Company shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Company shall invoice the Customer on at the intervals or on the invoice dates set out in the Order Confirmation.
- 9.5 Except where clause 15.1 applies, the Customer shall pay each invoice submitted by the Company:
- 9.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Company and confirmed in writing to the Customer; and
- 9.5.2 in full and in cleared funds to a bank account nominated in writing by the Company, and
- time for payment shall be of the essence of the Contract.
- 9.6 Receipt for payment will only be issued by the Company at the Customer's written request.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 14 (Termination), the Customer 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 9.8 will be calculated at the base rate of the Bank of England plus 8% per annum.

- 9.9 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).

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Company shall at all times retain ownership of any and all intellectual property rights which may subsist or are capable of subsisting in the Goods and/or Services (as applicable), the product of the Services and/or any ancillary documents, goods or other items which may be provided by the Company to the Customer in connection with any Goods or Services (including manuals, drawings, plans and computer programmes) and the Customer shall not obtain ownership of any such intellectual property rights whether by operation of the Conditions or otherwise.
- 10.2 The Customer shall not, whether by act or omission, do anything which is inconsistent or contradictory with the ownership by the Company of any intellectual property rights as referred to in clause 10.1.

## **11. DATA PROTECTION**

- 11.1 Both parties will comply with all applicable requirements of the UK Data Protection Legislation and any other law which applies to the UK relating to personal data and all other legislation and regulatory requirement in force from time to time which apply to a party relating to the use of personal data. Without prejudice to the generality of this clause, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any personal data to the Company for the duration and purposes of the Contract.

## **12. CONFIDENTIALITY**

- 12.1 Each party undertakes that it shall not at any time, and for a period of 3 years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except
- 12.1.1 to its employees, officers, representatives 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 this Agreement.; and
- 12.1.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## **13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 13.1 Neither party seeks to limit or exclude its liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation and/or for any other matter for which liability cannot be lawfully limited or excluded (including for any warranties regarding the supply of the Goods and/or Services pursuant to any applicable law or legislation which the Company cannot lawfully exclude or limit). Each provision of these Conditions shall be read as subject to this clause 13.1 and no provision is intended or shall be interpreted as seeking to limit or exclude any of the foregoing types of liability.

- 13.2 The Company shall not be liable for any loss or damage incurred by the Customer as a result of any reliance placed by the Customer on any information or advice unless the Company has specifically agreed in writing to accept liability to the Customer for any particular piece of information or advice provided. Where the Company has agreed in writing to accept such liability then the Company's liability to the Customer for any errors, inaccuracies, omissions or misleading statements contained in that information or advice shall be subject to the limitations and exclusions on the liability of the Company as detailed in this clause 13.
- 13.3 The Company shall not be deemed to be in breach of this Contract or otherwise liable to the Customer for any failure or delay in performing any of its obligations under this Contract to the extent that the failure or delay in performance is due to a Force Majeure Event (as defined at clause 16).
- 13.4 The Company's entire liability to the Customer is as set out in clause 6 and 8.4 and the Company shall not be liable to the Customer for any of the following types of loss which are wholly excluded:
- 13.4.1 indirect, special or consequential loss, regardless of whether in each case the Company was aware or ought reasonably to have been aware of the possibility for such loss or damage to occur;
  - 13.4.2 damages, costs or expenses; and or
  - 13.4.3 loss of profits, loss of anticipated profits, loss of sales or business, loss of contracts, loss of or damage to goodwill or anticipated savings.
- 13.5 The maximum financial liability of the Company to the Customer for any and all claims relating to this Contract shall be limited to the price or charges (ex VAT) which have actually been paid by the Customer to the Company under this Contract.
- 13.6 The limitations in this clause 13 apply to every liability of the Company including liability in contract, tort (including negligence) misrepresentation, restitution or otherwise
- 13.7 This clause 13 shall survive termination of the Contract.

#### **14. TERMINATION**

- 14.1 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:
- 14.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
  - 14.1.2 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), 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;
  - 14.1.3 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
  - 14.1.4 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.

- 14.2 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
  - 14.2.2 there is a change of Control of the Customer, whereby Control has the meaning given in section 1124 of the Corporation Tax Act 2010.
- 14.3 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due to the Company under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, or the Company reasonably believes that the Customer is about to become subject to any of them.

## 15. CONSEQUENCES OF TERMINATION

- 15.1 On termination of the Contract:
- 15.1.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 15.1.2 the Customer shall return all materials, equipment, documents and other property of the Company and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.2 Termination of the Contract shall not affect any rights, remedies, obligations and 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 Contract which existed at or before the date of termination.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 16. FORCE MAJEURE

- 16.1 Deliveries of the Goods and/or Services may be totally or partially suspended and neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, including, without limitation acts of god, flood, pandemic, lightning, war, strikes or other industrial action ("a **Force Majeure Event**"). In such circumstances the affected party shall notify the other should such an occasion arise and be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for more than 90 days, the party not affected may terminate this Contract by giving written notice to the affected party.



## 17. GENERAL

### 17.1 Assignment and other dealings

17.1.1 The Company may at any time;

- (a) assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract; and/or
- (b) sub-contract the performance of any and all of the supply of the Goods and/or Services at its sole discretion.

17.1.2 The Customer 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 without the prior written consent of the Company.

17.2 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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) and may not be served by email.

17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 17.3 shall not affect the validity and enforceability of the rest of the Contract.

17.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

### 17.6 Entire agreement.

17.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misrepresentation] based on any statement in the Contract.

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

17.7 **Third party rights.**

17.7.1 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.

17.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

17.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by each of the parties (or their authorised representatives).

17.9 **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.

17.10 **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.