



# HERCULES NATIONWIDE HIRE SERVICES

## MEWP TERMS & CONDITIONS FOR HIRE

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### MEWP TERMS & CONDITIONS FOR HIRE

#### A. Definitions.

1. In this contract the following words and phrases shall mean:

We/Us/Our:	<b>Hercules Scaffolding Limited</b>
You/Your:	The individual, proprietor, business, firm, company, partnership, authority, or an organisation hiring the Equipment from Us.
The Parties:	You and Us.
Contract:	means an Order accepted by Us in accordance with B.2 and these terms and conditions together comprising the agreement between You & Us
Day:	8 consecutive hours.
Equipment:	any MEWP, plant, machinery including attachments & accessories that is to be hired by Us to You in the Contract
Hire Details:	details of the Equipment to be hired under the Contract, the Hire Period and the rate & period unit for such hire agreed at the start of the Contract
Hire Period:	the period for which the Equipment is hired by You from Us as set out in the Contract.
Hour:	any 60 consecutive minutes in which operator is supplied with the Equipment. Contract will state the minimum hire hours.
IPAF:	INTERNATIONAL POWERED ACCESS FEDERATION
Load:	The act of stowing & securing equipment for transportation & shall also include the act of unloading.
MEWP(S):	Mobile elevating work platform(s), any individual powered access machine regardless of maker, age or type including accessories and attachments.
Month:	4 Working Weeks.
Order:	an order placed by You to Us, including the Hire Details, in the order form format notified to You from time to time by Us;
Regulatory Requirements:	Means (a) any regulation or statute, by law, ordinance or subordinate legislation which is in force for the time being to which You are subject; (b) the common law as applicable to You for the time being; (c) any binding court order, judgment or decree applicable to You for the time being; and (d) any applicable industry code, policy, guidance, standard or accreditation terms enforceable by law which is in force for the time being, and/or stipulated by any regulatory authority to which You are subject.
Site:	Means the site specified in clause E1 or such other location as the Parties shall agree in writing.
Starting Date:	Starting Date Shall have the meaning set out in clause B2 below.
Week:	7 consecutive calendar days.
Weekend:	From normal finishing time on Friday until normal starting time on the following Monday.
Working Week:	From normal starting time on Monday until normal finishing time on the following Friday not exceeding 40 hours.

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2. Unless the context requires a different interpretation, the following rules should be used to interpret this Agreement: (i) any reference to a provision of a statute includes references to that provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after the Starting Date; (ii) words used in the singular should be interpreted to include the plural and vice versa; (iii) a reference to a person includes individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa; (iv) the word "party" means a party to this Agreement that are You or Us, the word "parties" means both You and Us, or in each case our respective permitted successors and assignees. The phrase "third party" means a person other than You or Us; (v) the word "including" means "including but not only"; (vi) a reference to a "Clause" is to the relevant clause of these terms and conditions; and (vii) the headings in this Agreement do not affect the meaning of the Clauses.

### **B. Details of Contract.**

1. The Equipment is hired to You on and subject to the terms of this Contract.
2. The Contract starts and is formed from the time You place an Order with Us and We have accepted that Order by any of (i) counter-signature thereof, or (ii) other formal written notification/confirmation of acceptance of Order by Us, or (iii) delivery of the Equipment to You whichever is the sooner (the "Starting Date").
3. Unless otherwise agreed in writing by Us, the Contract continues for the term set out in the Contract (the "Hire Period") unless terminated earlier in accordance with Clause K below.
4. These terms and conditions apply to all quotations and offers, acknowledgements, confirmations and Orders between us in relation to equipment. To the extent that these terms and conditions conflict with or are different from any terms and conditions contained in any Order, any terms that You may put forward at any time, or other document these terms and conditions will control and take precedence and any additional or inconsistent terms (except the Hire Details) are rejected by and are not agreed by both parties unless the other party's acceptance thereof is in writing in accordance with Clause B6 below and specifically refers to each such additional or conflicting term. In general, Our employees that you will be dealing with on a day to day basis do not have authority to negotiate terms.
5. This Contract sets forth the entire agreement between the parties and may be changed or modified only by written agreement signed by both parties. For the avoidance of doubt this Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the date of this Agreement.

### **C. Our charges for hiring equipment.**

1. The hire charges will begin at the Starting Date and such hire charge will end when the Equipment is returned to Us and an official returns notice has been issued by Us to You.

You agree to pay such hire charges in accordance with these terms.

2. We will charge according to the rate & period unit agreed at the start of the Contract. If We have agreed to charge You at the Working Week rate You must not use the Equipment on any Saturday or Sunday.
3. The rate charged for a [Month], [a Working Week] [a Week] is a minimum charge that will be levied even if You finish with the Equipment early. [In each of these cases] once one full period has been charged, fractions of the period will be applied if any subsequent period is not a complete unit at the following ratio[s] of the appropriate rate] for each additional day: [Monthly at 1/20th, Weekly at 1/7th & such sums for the period from and including the due date of payment up to the actual date of payment, whether before or after judgment. The interest shall be Working Week at 1/5th].

4. We will charge for all public & construction industry holidays as though they were normal working days unless We, at our absolute and sole discretion, have agreed in writing to waive charges for all or part of such holidays. Where We have agreed to suspend charges but the equipment remains with You "on hire" then the provisions of these Terms and Conditions will continue in full force save for those relating to the payment of hire charges.

5. We will make full allowance for hire charges for time lost as a result of breakdown of the Equipment caused by fair wear & tear or by the unauthorised absence of Our operator.

6. When the Equipment has broken down or is unavailable for work due to any action or lack of action You may have taken:

- a. We will charge 2/3rds of the hire rate; together with
- b. any reasonable costs or charges that We reasonably incur in repairing the Equipment.

7. In the event of seizure or detention by any receiver, administrative receiver, sheriff, liquidator or statutory body or the equivalent in any jurisdiction We will continue to charge You the full hire charge until We are able to recover Our Equipment.

8. If You cannot return or restore the Equipment to Us for any reason (including but not limited to circumstances where the Equipment cannot be removed from a construction site and is retained within the construction) We will continue to charge the hire rate until You have [fully compensated Us / paid Us a compensation charge] for the loss or have provided Us with suitable replacement equipment & We have agreed to accept this. For avoidance of doubt "fully compensated" means reimbursement of full replacement cost of the Equipment at the date of loss/replacement.

9. The reduced hire rate in clauses C6 above will only come into effect after You have notified Us.

10. We will not make any allowance in the charges levied under clauses C6 and C7 above due to delays or disputes caused by actions of any insurer or other third party acting on Your behalf.

11. We will invoice You weekly or monthly in arrears for the hire charges and any other charges arising under the Contract in Pounds Sterling unless You have requested and We have agreed in writing to accept payment in any other currency. [In the event that we agree to accept payment in another currency all amounts will be converted to Pounds Sterling using the applicable currency exchange rates of HSBC Bank plc in force on the date of the invoice]

12. Payment by You, in accordance with the invoice total, including VAT charged at the standard rate applicable at the date of the invoice, without deduction of bank charges, will be due and payable in accordance with Our terms of payment stated on the front of the Contract.

13. All payments to be made by You under the Contract shall be paid to Us without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.

14. If You fail to pay any hire charges or any other sums payable under this Contract by the due date for payment under this Contract then, without limiting Our rights under clause K5c You shall pay interest on such sums for the period from and including the due date of payment up to the actual date of payment, whether before or after judgment. The interest shall be paid at the rate of four per cent per annum above the base rate from time to time of HSBC Bank plc.

### **D. Equipment supplied with an operator.**

1. When We supply an operator with the Equipment We will charge an hourly rate based on a five day, forty hour, normal working week and a timesheet basis of charging.

2. All hours worked, including travelling to and from Your place of work, as notified to us at or before the Starting Date, which fall outside of normal start &

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finishing times between Monday & Friday & all hours worked at weekends or during public holidays will be subject to additional charges to cover the operator's overtime. These charges will be at Our current labour rates which We will notify to You.

3. Unless We agree otherwise the minimum period of hire charged for any operated Equipment will be 8 Hours.

4. The signature provided by You (or by anyone on Your behalf) on Our time sheet will indicate Your agreement that the Hours shown will form the basis for Our charges.

5. The operator will be under Your control & direction throughout the Hire Period. You warrant that You will provide a healthy & safe working environment for the operator, in accordance with any rules, regulations, enactments, or the requirements of any statutory body, relating to security and health and safety and provide him/her with proper & reasonable instructions & supervision.

6. You shall indemnify Us against any losses, claims, demands, awards, proceedings, damages, charges, costs and expenses that the operator might suffer or incur as a result of Your breach of these terms and conditions.

### E. Delivery & collection

1. If We deliver, collect or transfer hired Equipment, which has been hired by You, You must pay Us Our transport charges, as notified to You. Delivery will be at the site specified in the Contract ("Site") You shall ensure that Your duly authorised representative shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that You have examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended.

2. If You wish to change the Site You agree to pay Us any additional charges We might incur.

3. You are responsible for ensuring that a clear, firm & accessible area is available for Loading. If We incur extra costs or expense due to any of Your acts or failures to act in this respect You agree to pay Our reasonable charges in compensation of such costs and expenses.

4. When authority is needed from landowners or other third parties to enter any area which has restricted access You must obtain such consent and arrange for staff to attend to comply with rules or traffic restrictions which are in force at the time.

5. You are responsible for Loading & must provide competent supervision at all times.

6. Any road or bridge tolls or congestion or road use charges that We incur during transport of the Equipment to or from Your site will be charged to You.

7. Any person supplied by us, including vehicle drivers, to assist You to Load equipment will be considered to be under Your control. You must not instruct anyone to do anything that is in breach of any rules, regulations, enactments, or the requirements of any statutory body, relating to security and health and safety, or which would be unsafe.

8. You must not move the Equipment to any other location without Our written consent obtained prior to the proposed change of location.

### F. Safety.

1. You must ensure that all Equipment operators are competent & have been adequately trained on the type of Equipment hired under the Contract and that use of the Equipment by You (and Your agents and contractors) is carried out in a safe and competent manner. Competent supervision and assistance (eg: Banksmen) must be employed where necessary.

2. We will supply Equipment to You that is fit for purpose when used in accordance with the maker's design parameters & instructions, which are available for Your review on request. We will maintain evidence of service, inspection & statutory tests. You must ensure that the Equipment is checked before each period of use in accordance with such instructions. You must ensure that any damage or defect is reported to Us as soon as is reasonably

possible. You agree that you will not use the equipment until you have carried out thorough examination of the Equipment and you are satisfied that the Equipment will be safe and without risk to health when used by You (and your agents and contractors) If any part of the Equipment becomes defective or inoperable for any reason You must not allow it to be used again until We have examined it & advised You that it is safe to resume use. You must allow Our staff access to the Equipment to inspect, test, repair or replace it as necessary.

3. You must not permit the Equipment to be used in any situation where it is unsafe to use it or where it may become contaminated with dangerous substances. You must advise Us immediately if You suspect that the Equipment has become contaminated with any substance that is classified as hazardous under any rules, regulations and enactments relating to health and safety.

4. You must pay for cleaning any Equipment that is returned in an unreasonably dirty condition. You will pay for all special decontamination measures necessary to remove hazardous substances and to certify the Equipment as safe.

5. If Equipment requiring attention under clause F4 is unavailable for work for more than 24 hours after the off hire date We will continue to charge You the hire rate until such time as cleaning or decontamination is complete & where necessary has been certified safe.

6. You agree to accept all responsibility for the storage and competent use of the Equipment in a safe and responsible manner in accordance with the maker's design parameters & instructions. Nevertheless, once the Contract has begun, if, in the reasonable judgement of Our staff, We consider that any use or action that You are undertaking or intend to undertake with the Equipment is likely to place any person in danger of injury We reserve the right to end the Contract with immediate effect by serving You with a verbal notice of termination. This will be confirmed in writing giving Our reasons within 24 hours. Such notice will count as the "off hire" date and time.

7. If We issue a notice under clause F6 You agree to immediately cease using the Equipment & to make it immediately available for collection by Our representative.

G. Your responsibility, including reporting of accidents.

1. The Equipment shall at all time remain Our property and title shall remain with Us and You shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Contract).

2. You will maintain & not remove or obscure any property or safety notices which are placed on the Equipment. You will immediately notify Us of any loss or damage concerning such notices.

3. Risk for the Equipment shall pass to You and You become responsible for the Equipment (including insurance in accordance with Section L) when You or Your representative receive it, either when You collect from our premises or We deliver to Your site. This responsibility continues in full force throughout the whole period of the Contract including any time that the provisions of clause C7 are in effect.

4. You will be responsible for conducting any risk assessment, method statement or safety check necessary on site before using the Equipment & You will comply with all risk assessments already in force at the site of operation in so far as they affect the operation of the Equipment.

5. Unless You have asked Us & We have agreed to conduct a survey & You have agreed to Our recommendations in writing, the selection of the Equipment & its use is based upon Your skill & judgement & You shall be fully responsible for the same.

6. You must;

- operate all Equipment in accordance with the maker's design parameters & instructions and all applicable rules, regulations and enactments;
- check regularly that the Equipment remains in good order & fit for purpose & ensure that the operator follows all operating procedures laid down in the instructions We provide and those of the maker;

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- c. keep the Equipment secure at all times ensuring that it is protected from theft, damage & improper use;
- d. obtain consent & comply with any rules concerning the use of the Equipment on, over or adjacent to property belonging to, or licensed or leased by, anyone else;
- e. inform Us immediately if the Equipment is involved in any accident that results in injury to any person and further inform Us at the earliest possible opportunity if the Equipment is involved in any other accident whatever the circumstances. Any verbal notification must be confirmed by You in writing to Us;
- f. be aware that changes in ground conditions & the weather will affect the safe working of all MEWPS. You must not allow any MEWP to be used in unsafe conditions;
- g. allow the operator sufficient time at the start of every period of use to make all of the checks necessary on a MEWP that are laid down in the maker's instructions We provide and those of the maker;
- h. not allow (except as required by clause G6) anyone to tamper with or remove any part of the Equipment, including decals, without Our express written consent;
- i. not without Our prior written consent, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and You shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Us against all losses, costs or expenses incurred as a result of such affixation or removal;
- j. not do or permit to be done any act or thing which will or may jeopardise Our right, title and/or interest in the Equipment and, where the Equipment has become affixed to any land or building, You must take all necessary steps to ensure that We may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing granted in Our favour of any rights such person may have or acquire in the Equipment and a right for Us (or our agents) to enter onto such land or building to remove the Equipment, and you shall pay the costs of Our (and/or our agents) so doing;
- k. not, without Our prior written consent, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow or permit (or cause by any act or omission) any charge, security, lien or other interest or right whatsoever to be created wholly or partly over/ on the Equipment;
- l. ensure that the Equipment is supplied with the correct fuel or electricity supply as appropriate; and
- m. at the end of the hire pay Us the cost of repairs that are necessary due to damage or neglect.

### H. Breakdown procedure.

1. If the Equipment breaks down or stops working You must report this to Us at the earliest possible opportunity.
  2. Except under H3 & H4 below, You must not allow anyone to attempt to repair the Equipment unless We have agreed to this in writing.
  3. You are responsible for all punctures & damage to tyres that occur on the Equipment throughout the life of the Contract. You may arrange for a professional tyre repairer to repair punctures or replace tyres on Your behalf. You agree to inform Us that this work has been carried out and provide Us with a copy of the tyre repairer's worksheet.
- You warrant that all replacement tyres or tubes fitted by anyone acting to Your instruction are of equivalent or better specification to those originally fitted.

4. You may change electrical plugs or couplers for approved alternative types, provided this work is carried out by an appropriately qualified and competent person. You must restore Our original plugs at the end of the hire or We will charge You to do this.
5. We will repair or change the Equipment at Our discretion if it breaks down or stops working. If breakdown has been caused by damage, neglect or misuse on Your part, You will pay for all repairs & transport costs involved.
6. You agree to allow Our staff adequate access to any location where You are using the Equipment for the purposes of repair, inspection, calibration or collection of the Equipment. If access is denied due to any action or omission on Your part We will charge You for any additional costs that We incur.

### I. Safe Use.

1. Unless We have notified You in writing that the Equipment hired under the Contract is certified to be used as a lifting appliance You must not use it as such.
  2. The safe working load (SWL) that may be carried in the cage of a MEWP is marked on the Equipment. You must not allow it to be exceeded.
- J. Limits of Our Liability to You.
1. All times for transport or other attendance advised by Us are approximate.
  2. We are not liable for delays that are caused by circumstances beyond Our reasonable control.
  3. We will not be liable to You for any special, incidental, indirect, punitive or consequential loss or damages, whether occasioned by the negligence, fault, error, omission, act or breach of Us, Our employees, contractors and agents, including, without limitation, loss of contracts, loss of business, loss of customers, revenue or profits, loss of use or data, loss of savings or anticipated savings, loss of investments, loss of goodwill or reputation, capital costs or loss of extra administrative cost whether or not foreseeable, as a result of any part of the Equipment breaking down or failing to work, defects or latent defects or arising from any one event or a series of connected events arising out of or in connection with this Contract howsoever that liability arises, including without limitation, any circumstances arising as a result of Us ending the Contract under the provisions of clause F6, or breach of contract, tort, misrepresentation or arising from statute, indemnity or otherwise.
  4. Nothing in this agreement limits or excludes Our liability:
    - (i) for death or personal injury resulting from negligence; or
    - (ii) for any damage or liability incurred by You as a result of fraud or fraudulent misrepresentation by Us, our respective subsidiaries and suppliers, nor any person for whom We are responsible.
    - (iii) for any liability which cannot be so limited or excluded by law.
  5. This Contract sets forth the full extent of Our obligations and liabilities in respect of the Equipment and our hiring of the Equipment to You. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on Us except as specifically stated in this Contract or as cannot be excluded by law. Any condition, warranty or other term or liability concerning the Equipment (including liability for defects and/or latent defects) which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded, except insofar as it is not legally possible to exclude it, and the parties agree that it is fair and reasonable to do so. We recommend that if You require warranties and/or remedies in respect of the Equipment that You obtain these directly from the original manufacturer of such Equipment.
  6. Subject to J4 and J5 above, We will not be responsible for any loss, damages, proceedings, suits, third party claims, judgments, awards, expenses and costs (including legal costs) of any kind or nature caused directly or indirectly by the Equipment or its use.
  7. Notwithstanding any other provision of the Contract, except Clause J4 above to which this Clause is subject, should We be found liable for any loss, damages,

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proceedings, suits, third party claims, judgments, awards, expenses and costs (including legal costs) suffered or incurred by You or any third party for or in respect of all breaches of Our contractual obligations under the Contract and all representations, statements and tortuous acts or omissions arising under or in connection with the Contract, the Equipment or its use, Our aggregate liability shall in no event exceed the value of the hire charges for the contracted hire period in which such loss or damage occurred.

8. You shall indemnify Us in full and hold Us harmless in respect of any loss, damages, proceedings, suits, third party claims, judgments, awards, expenses and costs (including legal costs) incurred by or taken against Us as a result of the negligence, fault, error, omission, act or breach of You or Your employees, staff, contractors, agents or representatives and for any breach of the Contract whatsoever.

### **K. Termination of hire.**

1. If a termination date has not been agreed at the start of the Contract You must give Us at least 7-days notice of termination in advance.
2. If the Contract is for a fixed period You must return the Equipment to Us or confirm that You wish Us to collect it before the expiry of the fixed period. The Contract can only be extended or terminated early by written agreement between both parties.
3. Any notice due under K1 – K3 above may be given verbally but must be confirmed in writing within 24 hours. In the event of a dispute concerning off hire dates ONLY a written notification (sent to in accordance with Clause M7 below ) will be acceptable as proof of instruction.
4. We may terminate the Contract with immediate effect if:
  - a. You make a voluntary arrangement or composition with Your creditors or (being an individual or firm) become bankrupt or (being a company) become subject to an administration order or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or
  - b. an encumbrancer takes possession, or receiver, or administrative receiver is appointed over any of Your property or assets; or You cease or threaten to cease, to carry on business; or We reasonably believe that any of the events mentioned above are about to occur in relation to You or that you are unable to pay you debts as they fall due and We notify You accordingly.
  - c. You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or You admit inability to pay Your debts or You are deemed unable to pay its debts within the meaning of [article 13] [section 123 of the Insolvency Act 1986] [Insolvency (Northern Ireland) Order 1989] [Section 5 of the Personal Insolvency Act 2012 [Southern Ireland];
  - d. You suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of Your business;
  - e. in the event any equivalent or similar event as those set out in K4 a to d (inclusive) occurs in any jurisdiction whatsoever;
  - f. You fail to pay any charge or sum within 14 days of payment becoming due;
  - g. You commit a breach of any other term of the Contract;
  - h. You allow to be done any act or thing which in Our reasonable opinion may jeopardise Our rights in the Equipment or any part thereof; or
  - i. You do not advise us in writing of any change of ownership of Your organisation within the meaning of section 840 of the Income and Corporation Taxes Act 1988
5. Upon termination or expiry of this Contract, however caused:
  - a. Our consent to the Your possession of the Equipment shall terminate and We may, by Our authorised representatives, without notice and at Your expense, retake possession of the Equipment and for the purpose may enter the Site or any premises at which the Equipment is located; and
  - b. Without prejudice to any other of Your rights or remedies, You shall pay to Us on demand all hire charges and other sums due but unpaid at the date of such demand together with any interest accrued under Section C12 above.

6. If You retain Equipment after expiry date agreed on the Contract or following termination of the Contract or it is unavailable when Our transport calls to collect it You will have to pay on demand Our reasonable additional expenses incurred due to Your failure to restore the Equipment to Us. These expenses may include (but are not limited to) a continuance of the agreed hire charge, the transport charge, storage charges and further costs incurred by Us in circumstances where We may have to make payment or compensation to any other party due to the non-availability of the Equipment or its attachments due to Your actions.

7. Upon safe receipt of the Equipment either at Our depot or to Our authorised representative We will issue an off hire advice note. You agree that only this advice will be recognised as evidence of return of the Equipment to Us. It is Your responsibility to examine the off hire advice to ensure that returns, especially part returns, are correctly listed.

8. You will be liable for any damage to the Equipment that We may notify to You as soon as is reasonably practical after the Equipment is back in Our custody.

### **L. Insurance.**

1. The risk of loss, theft, damage or destruction of the Equipment shall pass to You on Delivery. The Equipment shall remain at Your sole risk during the period of hire and any further term during which the Equipment is in Your possession, custody or control (Risk Period) until such time as the Equipment is redelivered to Us.
2. During the Hire Period and the Risk Period, You shall, at your own expense, obtain and maintain the following insurances:
  - a. insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as We may from time to time nominate in writing
  - b. insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such other amount We may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
  - c. insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance We may from time to time consider reasonably necessary and advise to You.
3. You agree to forward Us a copy of Your insurance certificate covering all statutory liabilities at the start of the first hire with Us and at each renewal thereafter.
4. You MUST NOT permit the Equipment to be used "airside" at any aerodrome or heliport without first forwarding to Us proof that You have in place a special insurance policy to specifically cover such risks & that the owner of the site has accepted Your insurance as adequate.
5. You must pay the cost of replacing any Equipment that You are unable to restore or return to Us. You agree to insure the Equipment for its replacement cost or to have sufficient liquid assets to pay Us compensation for its loss. If You receive any money in settlement for all or part of any claim arising out of damage or theft of Our Equipment You agree to hold that money in trust for Us and pay it to Us on demand. You agree not to negotiate or compromise any matter without our express written permission.
6. All insurance policies procured by You shall be endorsed to provide Us with at least twenty (20) Working Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon Our request name Us on the policies as a loss payee in relation to any claim relating to the Equipment. You shall be responsible for paying any deductibles due on any claims under such insurance policies.
7. If You fail to effect or maintain any of the insurances required under this

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Contract, We shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from You.

### **M. Miscellaneous**

1. Each party executes this Contract as an independent contractor in the course of their business and not as a consumer and nothing herein contained shall be construed to form a joint venture, partnership or similar form of association except as specifically provided for therein.

2. If either party fails to perform its obligations in terms of this Contract, no waiver or breach of those obligations shall constitute a waiver of any further or continuing breach of the same or a different kind nor shall any delay or omission of either party to exercise any of its rights arising from any default affect or prejudice either party's rights as to the same or any future default.

3. This Contract and any rights and obligations arising therefrom may not be assigned by You without Our prior written consent.

4. You shall:

a. comply with all Regulatory Requirements applicable to You in connection with, entering into, performing your obligations under, your use of the Equipment, and all acts and omissions in connection with this Contract, including the Bribery Act 2010; and

b. have and maintain in place throughout the term of this Contract and enforce where appropriate Your own policies and procedures to comply with Clause M.4.a above, including adequate procedures under the Bribery Act 2010 For the purposes of this Clause M4, the meaning of adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act).

5. Termination or expiry of this Contract for any reason shall not affect any rights or liabilities that have accrued prior to such termination or expiry or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination or expiry.

6. No term of this Agreement shall be enforceable by a third party.

7. If any provision of the Contract is held by any court or other competent authority to be illegal, invalid, void or unenforceable in whole or part, the Contract shall continue to be valid as to the other provisions thereof and the remainder of the affected provision shall be unaffected

8. Any verbal notification MUST be confirmed in writing within 24 hours. In the event of any dispute only written notification will be accepted as proof of notification. Written notices to Us, may be given by hand delivery or by first class or pre-paid registered post to Our address available on our web site. Instructions given to Us by email will not be deemed received unless You obtain an electronic delivery confirmation or a written reply from Us in relation to such email communication.

9. 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) will be governed by, and construed in accordance with, English and Welsh law, and the Parties irrevocably agree to submit to the exclusive jurisdiction of the courts of English and Welsh law.

Hercules Nationwide. 0845 003 90 89

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