

# CONDITIONS FOR SALE OF SERVICES TO CONSUMERS AND BUSINESSES

## 1. INTERPRETATION

1. In these conditions the following words have the following meanings:

“**Consumer**” an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession;

“**Contract**” means a contract which incorporates these conditions and made between the Customer and the Supplier for the hire or sale of Goods;

“**Customer**” means the person, firm, company or other organisation hiring Hire Goods or purchasing Sale Goods;

“**Digital Content**” means data which is produced and supplied in digital form;

“**Force Majeure**” means any event outside a party’s reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events;

“**Liability**” means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;

“**Supplier**” means Adrian, Woodhaven, Tattershall Road, Woodhall Spa, LN10 6UQ at the address stated and will include its employees, servants, agents and/or duly authorised representatives;

“**Services**” means the services and/or work (if any) to be performed by the Supplier for the Customer in conjunction with the hire or sale of Goods including any delivery and/or collection service in respect of the Goods.

## 1. BASIS OF CONTRACT

1. Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a Consumer. Where the Customer is acting as a Consumer any provision which is marked with an asterisk (\*) may, subject to determination by the Courts or any applicable legislation, have no force or effect and if any provision is under the applicable law of the Contract unenforceable in whole or in part or shall have no force or effect the Contract shall be deemed not to include such provisions but this shall not affect the enforceability of the remainder of the Contract. For further information about your statutory rights contact your local authority Trading Standards Department or Citizens Advice Bureau or if based in the Republic of Ireland your local office of the Director of Consumer Affairs or Citizens Information Centre.

## 2. **FAULTY GOODS, DIGITAL CONTENT AND/OR SERVICES**

1. Where the Customer deals as a Consumer, the Supplier is under a legal duty to supply Goods, Digital Content and Services that are in conformity with the contract between the parties. In such circumstances, the Customer has legal rights in relation to Goods and Digital Content that are, for example, faulty or not as described and in relation to Services that are, for example, not carried out with reasonable skill and care, or if the materials used to carry out the Services are faulty or not as described.
2. Advice about Customers' legal rights where they deal as a Consumer is available from their local Citizens' Advice Bureau or Trading Standards office. Nothing in these conditions will affect these legal rights.

## 1. **PAYMENT**

1. The amount of any Deposit, Rental, monies for Sale Goods and/or charges for any Services shall be as quoted to the Customer or otherwise as shown in the Supplier's current price list from time to time. Where a Deposit is required for the Hire Goods it must be paid in advance of the Customer hiring the Hire Goods. The Supplier may also require an initial payment on account of the Rental in advance of the Customer hiring the Hire Goods.

2. Payment by the Customer on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash or cleared funds in respect of the full amount outstanding.
3. \*If the Customer fails to make any payment in full on the due date the Supplier may charge the Customer interest (both before and after judgment/decreed) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of the Supplier's bank whichever is higher.
4. \*The Customer shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

## DEFAULT

1. If the Customer:-
  - fails to make any payment to the Supplier when due without just cause;
  - breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
  - persistently breaches the terms of the Contract;
  - provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
  - pledges, charges or creates any form of security over any Hire Goods or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any property of the Customer, has a bankruptcy petition/petition for sequestration presented against it or the Customer takes or suffers any similar action in any jurisdiction;
  - being a company, ceases or threatens to cease to carry on business, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of its assets,

any attachment order/arrestment is made against the Customer, any distress/diligence, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;  
appears to the Supplier (acting reasonably) due to the Customer's credit rating to be financially incapable of meeting its obligations under the Contract; and/or  
appears to the Supplier (acting reasonably) to be about to suffer any of the above events;

2. then the Supplier shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 12.2 below.
  1. If any of the events set out in clause 12.1 above occurs in relation to the Customer then:-
    - except where the Customer is acting as a Consumer the Supplier may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Goods owned by the Supplier may be and repossess any Goods;
    - the Supplier may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with the Customer;
    - the Supplier may immediately cancel, terminate and/or suspend without Liability to the Customer the Contract and/or any other contract with the Customer; and/or
    - \*all monies owed by the Customer to the Supplier shall immediately become due and payable.
  2. Any repossession of the Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach which occurred prior to repossession of the Goods.
  3. Upon termination of the Contract the Customer shall immediately:-
    - return the Goods to the Supplier or, as requested by the Supplier, make the Goods available for collection by the Supplier or its authorised representatives (the Customer granting or procuring for the Supplier or its authorised representative the right to enter the site without trespass) ; and
    - pay to the Supplier all arrears for Rentals, Charges for any Services, monies for any Sale Goods and/or any other sums payable under the Contract including, but not limited to, the cost of returning the Goods.

# LIMITATIONS OF LIABILITY

1. \*All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.
2. \*If the Supplier is found to be liable in respect of any loss or damage to the Customer's property the extent of the Supplier's Liability will be limited to the retail cost of replacement of the damaged property.
3. Any defective Goods must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any Liability for defective Goods.
4. \*The Supplier shall have no Liability to the Customer if, without just cause, any monies due in respect of the Goods and/or the Services have not been paid in full by the due date for payment.
  1. Nothing in this Contract shall exclude or limit the Liability of the Supplier for fraud, death or personal injury due to the Supplier's negligence, nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

## GENERAL

1. The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.
2. When dealing as a Consumer, if the Customer has any questions or complaints it may contact the Supplier by telephoning its customer service team on 07826313418 or by e-mail it at [adrian.williams@consistentsalesexcellence.com](mailto:adrian.williams@consistentsalesexcellence.com)
3. \*The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs

- (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Supplier and arising from or due to any breach of contract, any tortious/delictual act and/or omission and/or any breach of statutory duty by the Customer.
4. \*No waiver by the Supplier of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
  5. The Supplier shall have no Liability to the Customer for any delay and/or non-performance of a Contract to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
  6. All third party rights are excluded and no third parties shall have any rights to enforce the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999. This shall not apply to any finance company with whom the Supplier has an outstanding finance agreement relating to the Hire Goods. Such finance company shall, subject to the Supplier's consent, have the right to enforce this Contract as if they were the Supplier.

This Contract is governed by and interpreted in accordance with the law of the country where the Supplier is located and that country will have exclusive jurisdiction in relation to this Contract. The Supplier shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Goods and/or Services after a defect has become apparent or

1. suspected or should reasonably have become apparent to the Customer.
2. The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any

- costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer.
3. \*The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.
  4. The Supplier shall have no Liability to the Customer for any of the following losses (whether direct or indirect):-
    1. \*consequential losses;
    2. economic and/or other similar losses;
    3. business interruption, loss of business, contracts and/or opportunity including loss of profits and/or damage to goodwill; and/or
    4. special damages and indirect losses however so arising.
  5. \*The Supplier's total Liability to the Customer under and/or arising in relation to any Contract shall not exceed 5 times the amount of the Rental or monies payable for Sale Goods, in addition to charges for Services (if any) under that Contract or the sum of £1,000 (or Euro equivalent) whichever is the higher. To the extent that any Liability of the Supplier to the Customer would be met by any insurance of the Supplier then the Liability of the Supplier shall be extended to the extent that such Liability is met by such insurance.
  6. Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:-
    1. Liability for breach of contract;
    2. \*Liability in tort/delict (including negligence); and
    3. \*Liability for breach of statutory and/or common law duty;

except clause 13.9 above which shall apply once only in respect of all the said types of Liability.

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