

**1. Definitions**

**360° Service Items** means any associated ancillaries, services or optional extras hired or sold by Elliott to the Customer in addition to any Building under this Agreement including, air conditioners, furniture, equipment, generators, toilets and fire extinguishers and related service packages, and subject to any applicable 360° Service Terms.

**360° Service Terms** means any additional terms applicable to the particular 360° Service Items which are hired by the Customer as referenced or incorporated in the EHQ or the Hire Contract.

**Agreement** has the meaning given in clause 2.

**Building** means any relocatable or modular building or storage container hired by Elliott to the Customer under this Agreement, but does not include 360° Service Items.

**Customer** means the party referred to in the Hire Contract.

**Damage Waiver Excess** means the amount stated in the Hire Contract as the Damage Waiver Excess per damaged Building or other item of Hired Equipment, as applicable.

**Damage Waiver Fee** means the damage waiver fee, exclusive of VAT, specified in the relevant Hire Contract.

**EHQ** means the Elliott Hire Quotation prepared by Elliott for the Customer and which bears a quotation number.

**Elliott** means Elliott Group Limited.

**Exclusions** means any loss resulting from a risk which is not an Insured Risk, willful misconduct by the Customer or its employees agents or contractors, any loss of Hired Equipment revealed only when an inventory is made, loss of generating equipment in or connected to powered Buildings, bodily injury, glass breakage, civil or foreign war, nuclear damage, terrorism, embargo / destruction upon request of government or public authority, wear and tear, theft from an unsecure or unguarded building or Site, fraud, dishonesty, business interruption, indirect damages, loss damage or re-instatement of ground in or around the Site, losses or damage resulting from the incorrect use and maintenance of the Hired Equipment, and loss occurring outside the UK.

**Hire Charges** means the hire charges referred to in the Hire Contract at their full face value without any deduction, counterclaim or set-off whatsoever.

**Hire Contract** means the hire contract prepared by Elliott for the Customer and which bears a hire contract number.

**Hired Equipment** means any Buildings or 360° Service Items hired by Elliott to the Customer under the Agreement

**Hire Period** means the period of time from and including: (i) the Hire Start Date or Practical Completion (if Site Works are applicable); until (ii) the Hired Equipment is returned to Elliott in accordance with the Agreement.

**Hire Start Date** means the date specified as such in the Hire Contract, or if earlier, delivery of Hired Equipment to the Site.

**Individual** means a natural person, a partnership consisting of two or three persons not all of whom are bodies corporate; and an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership;

**Insured Risk** means fire, act of vandalism (by a person other than the Customer, its employees, agents and contractors), and theft from a secure or guarded Site.

**Minimum Hire Period (MHP)** means the Minimum Hire Period, as referred to in the EHQ or the Hire Contract.

**Practical Completion** means the date of completion of the Site Works (if applicable) as determined by Elliott at its discretion.

**Services** means any services provided by Elliott to the Customer in relation to the 360° Service Items as specified in the Hire Contract or the EHQ.

**Site** means the site or location set out in the Hire Contract.

**Site Works** means any installation works to be undertaken by Elliott as set out in the relevant EHQ or the Hire Contract.

**2. The Agreement**

2.1 The Agreement is comprised of these terms, being Elliott's Standard Conditions of Hire, any applicable additional 360° Service Terms, the Hire Contract and the EHQ.

2.2 All orders are subject to acceptance by Elliott and the terms and conditions of this Agreement will apply to any order issued by the Customer to Elliott and will prevail over any other terms and conditions whatsoever that may be issued by the Customer or attached to any order issued by it.

2.3 Elliott will only accept the Customer's order if Elliott is satisfied with the Customer's credit worthiness.

2.4 **IF THE CUSTOMER IS ACTING AS A CONSUMER CLAUSE 34 WILL APPLY AND THESE STANDARD CONDITIONS OF HIRE SHALL BE SUBJECT TO THE PROVISIONS IN CLAUSE 34.**

**3. Lapse of quotation**

3.1 The EHQ will lapse 30 days from the date of issue and may be withdrawn by Elliott at any time for any reason.

3.2 Any Hired Equipment or Service stated in the EHQ is provided subject to the availability of the applicable items and Services immediately before the Hire Period, and Elliott reserves the right to offer alternative items or Services should those included in the EHQ not be available or to withdraw the EHQ in its entirety.

**4. Completion and program of Site Works**

4.1 Clauses 4.2 to clause 4.5 only apply where Site Works are to be performed by Elliott as specified in the Hire Contract.

4.2 Elliott will advise the Customer of the program for the commencement and the completion of the Site Works.

4.3 Any date quoted for the completion of the Site Works in the EHQ, the Hire Contract or otherwise, is indicative only and given in good faith. Elliott will use its reasonable endeavours to reach Practical Completion by the date quoted; however, completion dates are not binding on Elliott.

4.4 The Site Works will be deemed to have achieved Practical Completion if in the reasonable opinion of Elliott they are fit for occupation or use. If the Site Works are delayed for any reason beyond the control of Elliott (including unsuitable Site conditions or weather conditions, or Elliott's compliance with any instruction or request of the Customer), then the anticipated completion date will be deemed extended for the period of the delay.

4.5 In the case of a delay, Elliott shall be entitled to be paid reasonable costs, including overhead recovery and abortive and suspension costs, except where the delay was solely caused by Elliott.

4.6 Except for Site Works specifically referred to as being the responsibility of Elliott in the EHQ, then any site works to be performed are entirely the responsibility of the Customer.

**5. Period of Hire**

5.1 Hire of the Hired Equipment shall commence on the Hire Start Date and shall continue until the expiry of the Hire Period.

5.2 At the conclusion of the MHP, unless terminated in accordance with the provisions of Clause 11 below, the Hire Period will continue and such hire will be subject to the Agreement until such time as all Hired Equipment is returned to and accepted by Elliott.

5.3 **IF THE CUSTOMER IS AN INDIVIDUAL THEN, NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, THE HIRE PERIOD SHALL NOT EXCEED 3 MONTHS. ACCORDINGLY INDIVIDUALS SHALL RETURN THE EQUIPMENT TO THE HIRER OR OTHERWISE MAKE THE EQUIPMENT AVAILABLE FOR COLLECTION BY THE HIRER ON OR BEFORE THE LAST DAY OF SUCH THREE MONTH PERIOD.**

**6. Hire Charges and Terms of Payment**

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- 6.1 The Customer will pay Elliott the Hire Charges for the duration of the Hire Period.
- 6.2 Elliott may adjust on an annual basis the Hire Charges to its then prevailing rates in its absolute discretion, excluding any consumable goods (such as fuel) which shall be subject to variation as set out in the Hire Contract.
- 6.3 If the Customer terminates the Agreement or returns Hired Equipment prior to the expiry of the MHP for whatever reason, then it will pay Elliott all monies owing at the time of termination or return, plus all amounts that would have been due for the balance of the MHP.
- 6.4 If the Customer retains Hired Equipment beyond the Minimum Hire Period, the Agreement shall continue to apply, save that the Customer shall be considered to be renting the Hired Equipment on a rolling month to month basis and after that time and at such frequency as Elliott determines, Elliott may in its absolute discretion adjust the Hire Charges to its then prevailing rates for hires on a month to month basis.
- 6.5 Elliott may at its discretion agree in writing Customer credit facilities subject to satisfactory credit checks undertaken by Elliott from time to time. The Customer consents to Elliott conducting relevant credit searches, whether company and/or personal, as it deems necessary from time to time. Elliott reserves the right to decline, withdraw or amend Customer credit terms at any time prior to or during the term of the Agreement, including requesting advance part or full payment of the Hire Charges or requiring the Customer to pay a deposit, as stated in the Hire Contract or EHQ which may be applied by Elliott against any amounts due and payable by the Customer.
- 6.6 Prior to delivery of the Hired Equipment and whether or not credit is provided in accordance with this Agreement, Elliott may require that the following costs are payable in advance: one month of Hire Charges together with any quoted delivery, installation, site works and any other Customer specific charges. Elliott reserves the right to increase the amount of Hire Charges payable in advance if it chooses to do so based on its credit assessment of the Customer or other factors which Elliott considers to be relevant.
- 6.7 Where it is agreed that the Customer will make a single payment to cover the MHP, the amount must be paid prior to the Hire Start Date. If such a hire continues after the MHP, invoicing and payment terms will be as otherwise set out in these Standard Conditions of Hire.
- 6.8 Elliott will endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. If delivery of the Hired Equipment is delayed by the Customer for any reason (including if the Site conditions are unfit for delivery), then the Hire Charges shall become payable from the Hire Start Date stated in the Hire Contract even though the Hired Equipment may not be delivered to the Customer until after the stated Hire Start Date.
- 6.9 Invoices will be issued by Elliott every 28 days during the term of the Agreement unless otherwise stated in the Hire Contract. The Customer will pay VAT where applicable and this will be itemised on invoices.
- 6.10 The Customer shall pay invoices within 30 days of the date of the invoice, or as otherwise stated in the Hire Contract. If requested to do so by Elliott, the Customer shall pay invoices by Direct Debit.
- 6.11 The Customer will pay all of Elliott's costs in collecting outstanding Hire Charges and any other payments due and payable by the Customer pursuant to the Agreement.
- 6.12 The Customer is not permitted to set-off any amounts owed to Elliott whatsoever.
- 6.13 If the Customer fails to pay an amount due and owing to Elliott under the Agreement by the due date for payment, the Customer must also pay to Elliott interest on the unpaid amount at a rate equal to the prevailing base rate of Barclays Bank plc plus 4% ("Default Rate"), calculated daily from the next day after the due date up to and including the date of payment. The Customer shall also be required to pay any costs incurred by Elliott in the collection of any overdue amount.

**7. Damage Waiver Program**

- 7.1 This clause 7 will only apply to the extent that the Customer has paid the Damage Waiver Fee.
- 7.2 The Damage Waiver Fee, plus VAT, will be automatically charged in addition to the Hire Charges, until a valid insurance certificate is provided by the Customer to Elliott demonstrating that the Customer has obtained insurance of the Hired Equipment at least to the minimum value set out in the relevant EHQ.
- 7.3 The Customer's timely payment of the Damage Waiver Fee relieves the Customer of liability in excess of the Damage Waiver Excess for any loss or damage to any Building and, only if such are covered by the Damage Waiver option taken by the Customer, 360° Service Items during the Hire Period caused by Insured Risks ("Damage Waiver"). The Damage Waiver does not provide coverage for the Exclusions or any other circumstances not covered by the Insured Risks and the Customer remains liable for any loss or damage to any Hired Equipment arising from Exclusions and any other circumstances not covered by the Insured Risks.
- 7.4 If any Hired Equipment is lost or damaged, before the Customer can limit its liability under this clause 7, it must:
- have paid the Damage Waiver Fees invoiced and any other amounts due and owing to Elliott;
  - pay the Damage Waiver Excess;
  - demonstrate that it has taken reasonable precautions against loss, damage, theft and forced entry;
  - notify Elliott in writing of any loss or damage to the Hired Equipment within five Business Days of becoming aware of such damage and have submitted a theft notification form available from Elliott;
  - if required by Elliott, deliver to Elliott, to its reasonable satisfaction, evidence of the loss or damage (including any police reports in the event of theft, vandalism or forced entry), within ten Business Days of becoming aware of such event; and
  - not be in breach, or not have breached, any term of this Agreement.
- 7.5 The parties acknowledge and agree that the Damage Waiver in this clause 7 is not insurance and therefore does not cover any general liability incurred by the Customer (including any loss or injury to third parties) or its or any third party's use of the Hired Equipment, any consequential loss incurred by the Customer or any third party, or any of the Exclusions.
- 7.6 If the Customer declines the Damage Waiver or is not current in its payment of the Damage Waiver Fee in relation to all of the Hired Equipment, it shall be required to insure the Hired Equipment itself in accordance with clause 8.

**8. Insurance**

- 8.1 The Customer shall throughout the duration of the Agreement and until the Hired Equipment is returned to Elliott's control (without prejudice to any liability of the Customer to Elliott) at its own expense insure the Hired Equipment with a reputable insurance company against all risks, loss or damage including all risks of third party and public liability arising out of ownership presence or use of the Hired Equipment in an amount not less than the full new replacement value of the Hired Equipment.
- 8.2 The Customer shall, promptly on request, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Elliott and proof of premium payment to Elliott to confirm the insurance arrangements. If the Customer fails to effect or maintain any of the insurances required under this Agreement, Elliott 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 Customer and to be paid on demand.
- 8.3 The interest of Elliott in the Hired Equipment shall be noted on the policy of Insurance which policy shall:
- name Elliott as loss payee;
  - not be capable of cancellation or amendment by the insurers (at the request of the Customer or otherwise) other than by 30 days' prior notice in writing to

- Elliott; and
- (c) provide that the insurers shall waive any breach of warranty under the policy of insurance as against Elliott.
- 8.4 The Customer shall (so far as necessary) irrevocably authorise the insurers to pay on an indemnity basis to Elliott all monies payable under the said insurance policy in respect of any loss or damage to all or any part of the Hired Equipment.
- 8.5 The Customer shall not use or allow the Hired Equipment to be used for any purpose not permitted by the terms and conditions of any policy of insurance for the time being relating to the Hired Equipment nor do or allow to be done any act or thing which may cause such insurance to be invalidated.
- 8.6 In the event of any loss of or damage to all or any part of the Hired Equipment the Customer shall give immediate notice to Elliott and shall make or assist in the making of any appropriate claim or claims under the said insurance policy in such manner as Elliott shall require and shall not in any manner settle or compromise any such claim without the prior written request of Elliott.
- 8.7 The Customer shall promptly reinstate or repair at its own expense Hired Equipment which has not become a total loss or a constructive total loss and shall continue to pay Hire Charges in respect of such Hired Equipment during such reinstatement or repair. All insurance monies received in respect of any such loss shall be applied (at Elliott's discretion) in or towards payment to Elliott of any amounts for the time being due and outstanding from the Customer to Elliott under the Agreement; and in or towards reimbursing the Customer for the costs of such reinstatement of repairs.
- 8.8 In the event that during the term of the Agreement any item of the Hired Equipment (the "Destroyed Equipment") becomes a total loss or a constructive total loss (whether as a result of its being lost, destroyed, damaged beyond repair, confiscated or otherwise) the hire of the Destroyed Equipment under the Agreement shall cease, but the Hire Charges shall remain due and owing for the remainder of the Hire Period and subject to the terms of the Agreement. Elliott may, at its discretion, apply any insurance proceeds received towards the replacement of the Destroyed Equipment and/or towards the payment of Hire Charges (whether or not due) and all other monies due and owing to Elliott by the Customer. Any surplus insurance proceeds after the application of this clause 8.8 shall be paid to the Customer.

**9. Transport, loading and unloading charges**

The Customer will pay all costs (at Elliott's current rates from time to time) of loading, transporting and unloading of the Hired Equipment relating to delivery and collection of the Hired Equipment to and from the Customer's Site.

**10. Delivery**

- 10.1 Delivery of the Hired Equipment or Sale Item (as applicable) is made by either:
- (a) the Customer collecting the Hired Equipment or Sale Item from Elliott's premises once Elliott has notified the Customer that it is ready for collection; or
- (b) if a place of delivery is specified in the Hire Contract, by Elliott delivering the Hired Equipment or Sale Item to that place.
- 10.2 Any date or time quoted for the delivery of the Hired Equipment or Sale Item, or performance of any Service, in the EHQ, the Hire Contract or otherwise, is indicative only. Elliott will use its reasonable endeavours to deliver the Hired Equipment or Sale Item by the Delivery Date and, if applicable, carry out the Services as soon as reasonably practicable, however, delivery dates or times are not binding on Elliott and time is not of the essence.
- 10.3 Elliott is not liable for any delay, failure or inability to deliver the Hired Equipment or Sale Item, or perform the Services, howsoever caused.
- 10.4 If the Customer fails to:
- (a) take delivery of the Hired Equipment or Sale Item (including when the Customer postpones delivery of the Hired Equipment);
- (b) provide Elliott with satisfactory and unrestricted access to the Site, provide suitable Site conditions for delivery of the Hired Equipment each upon the delivery date, and, if applicable, provide a Site suitable for the Site Works, by the date intended for the start of such Site Works; or
- (c) give Elliott adequate instructions (including any documents, licenses, permits or authorisations required for the delivery of the Hired Equipment);
- (d) notify Elliott of adverse weather conditions making it unsuitable (in Elliott's opinion) to deliver, unload and install the Hired Equipment;
- in respect of (a), (b) and (c) within 30 minutes of arrival at Site, and in respect of (d) prior to any transportation leaving its depot, then Elliott may charge the Customer for its reasonable costs associated with such failure and for abortive delivery costs and the storage and redelivery of the Hired Equipment or Sale Item and additionally, in the case of postponement of delivery by the Customer, the Customer shall be liable for all Hire Charges from the date of the intended date of delivery and Elliott may terminate the Agreement by giving the Customer three working days' notice.

**11. Termination and Off-hire**

- 11.1 The Agreement may be terminated by either party in accordance with the applicable Notice Period set out in clause 11.7, provided that any notice served by the Customer shall not be effective to terminate the Agreement until the expiry of the MHP and the termination of the Agreement will not be effective until the Hired Equipment is returned to Elliott's control.
- 11.2 The Customer may give notice to terminate the Agreement in writing (including by email) to Elliott (using the details provided in the Hire Contract), requesting that the Hired Equipment is taken off hire at the end of the applicable Notice Period ("Customer Off Hire Notice"). Following receipt of the Customer Off Hire Notice, Elliott will notify the Customer of the date on which the Notice Period will expire ("Off Hire Date") and the date Elliott intends to collect the Hired Equipment ("Collection Date").
- 11.3 The date for demobilisation and collection of the Hired Equipment is approximate only and Elliott will not be liable for any delay in the demobilisation or collection of the Hired Equipment howsoever caused.
- 11.4 The Customer is liable for all Hire Charges until the earlier of the end of the Notice Period or the end of the day on the Collection Date.
- 11.5 Notwithstanding the notified Collection Date, the Customer is required to comply with its insurance obligations and to protect the Hired Equipment from damage and loss until the Hired Equipment is returned to Elliott's control.
- 11.6 The Customer shall make the Hired Equipment available to Elliott at the Site without impediment on the Collection Date within 30 minutes of the collection vehicle arriving at Site. Any impediment (including adverse weather conditions not notified by the Customer to Elliott prior to any transportation leaving its depot) to the collection of the Hired Equipment on the scheduled Collection Date may result in additional charges to the Customer for any costs (including costs in relation to transport, labour, and crane hire) incurred by Elliott. If the Customer does not make the Hired Equipment available for collection on the scheduled Collection Date (including if the Hired Equipment is not in Collection Ready Condition (as defined in clause 14.3 below)), Elliott will contact the Customer to reschedule the Collection Date. In such case the Customer will be liable for Hire Charges until the date on which the Hired Equipment is returned to the control of Elliott even if that is after the originally scheduled Collection Date.
- 11.7 Except as stated in clause 11.1, the applicable notice periods (each, a "Notice Period") are as follows:
- (a) in the case of Hired Equipment which comprises Elliott's Modular equipment, not less than 3 months' notice in writing or 10 weeks' notice where the Hirer is an Individual;
- (b) in the case of Hired Equipment which comprises Elliott's Moduflex equipment, not less than 1 month notice in writing for 100 bays or fewer; 6 weeks' notice in writing is required for buildings of more than 100 bays; or
- (c) in the case of any other type of Hired Equipment and any associated Service where a Customer Off-Hire Notice is issued by the Customer or notification to terminate is served by Elliott, not less than 7 days' notice in writing.
- 11.8 Notwithstanding any other provisions of the Agreement, Elliott shall be entitled to (i) suspend all or any further deliveries or any Service under the Agreement or any other contract between the parties, and/or (ii) shall be entitled to terminate the Agreement immediately by written notice to the Customer if the

Customer:

- (a) shall fail to pay any Hire Charges or other sums due and payable under the Agreement in full by the due date;
  - (b) commits a material breach (howsoever occurred) of the Agreement (other than failure by the Customer to pay the Hire Charges) and in case of such breach being remediable, fails to remedy it within 7 days after receiving written notice (including by email) specifying the breach and requiring remedy of it;
  - (c) being a Company or other entity:
    - i. Has a petition presented for its winding up, or
    - ii. Passes a resolution for voluntary winding up (other than for the purpose of a bona fide amalgamation or reconstruction), or
    - iii. Enters into a voluntary arrangement with its creditors, or
    - iv. Becomes subject to an administration order, or
    - v. Has a receiver appointed for all or any of its assets, or
    - vi. Is subject to any other analogous process in any jurisdiction,
  - (d) being an individual or firm:
    - i. Becomes bankrupt or insolvent, or
    - ii. Enters into voluntary arrangements with its creditors; or
  - (e) Is subject to any other analogous process in any jurisdiction.
- 11.9 Upon termination of the Agreement pursuant to clause 11.8, all Hire Charges (including Hired Equipment collection and any other charges) and any sums payable in relation to any other 360° Service Items, including Services performed to the date of termination, shall become due immediately regardless of any provision of the Agreement to the contrary.
- 11.10 The Customer does not have the right to terminate the Agreement before the end of the MHP, but if Elliott, in its absolute discretion, agrees to permit such termination, it will be strictly on condition that Elliott may issue an invoice for the Hire Charges and Service charges (if applicable) for the unexpired portion of the MHP and the costs of the demobilisation and collection of the Hired Equipment at Elliott's then current rates which shall be paid in accordance with clause 6.10, or as otherwise agreed in writing, in addition to any amounts then currently due.
- 11.11 In the case of Hired Equipment which comprises Elliott's Moduflex equipment or Fireflex equipment, the following amounts shall be due and payable by the Customer if the Customer cancels the Hire Contract before the Hire Start Date:
- (a) between 4 to 6 weeks before the Hire Start Date, 6 weeks of Hire Charges or, if the Minimum Hire Period is less than 6 weeks, Hire Charges in an amount equal to the Hire Charges payable for the Minimum Hire Period;
  - (b) between 2 and 4 weeks before the Hire Start Date, 13 weeks of Hire Charges or, if the Minimum Hire Period is less than 13 weeks, Hire Charges in an amount equal to the Hire Charges payable for the Minimum Hire Period;
  - (c) between 1 to 2 weeks before the Hire Start Date, 26 weeks of Hire Charges or, if the Minimum Hire Period is less than 26 weeks, Hire Charges in an amount equal to the Hire Charges payable for the Minimum Hire Period; or
  - (d) less than 1 week before the Hire Start Date, 26 weeks of Hire Charges or, if the Minimum Hire Period is less than 26 weeks, Hire Charges in an amount equal to the Hire Charges payable for the Minimum Hire Period, plus any customisation costs incurred by Elliott for the purposes of the Hire Contract and, in the case of paragraph (d) above, any other preparatory costs including haulage, craneage and modular preparation.

## **12. Customer's obligations**

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- 12.1 The Customer, at its own cost, will assume all responsibility for all conditions of the Site above and below the surface including all environmental matters as may be applicable to the Site.
- 12.2 The Customer warrants that it has sought and obtained all necessary consents, licenses and approvals required for the delivery, collection, movement, loading, unloading, siting, installation and use of the Hired Equipment, and shall be deemed to have made all necessary due inspections, risk assessments, made all inquiries of all matters pertaining to the Site and any access to the Site required by Elliott.
- 12.3 Unless otherwise expressly agreed in writing between the parties, the Customer warrants that the Site Works are capable of being performed on the Site; and the Site and site access (including ground conditions and weather conditions) are suitable for the safe and effective delivery, collection, movement, loading, unloading, siting, installation and operation of the Hired Equipment and performance of the Services and Site Works.
- 12.4 The Customer will at all times ensure that Elliott has sufficient access to the Site to do all things required to be done under the Agreement including delivery, unloading, reloading and recovery of the Hired Equipment, Sale Items and performance of the Services. The Customer will provide adequate facilities at the Site including vehicular off loading, secure storage for Elliott's Hired Equipment and facilities to enable Elliott to safely undertake the Site Works and the Services.
- 12.5 The Customer shall provide adequate and unrestricted access to the proposed Site for delivery unloading reloading and recovery (where the Customer has not paid the full price for the Sale Items) of the Hired Equipment and Sale Items.
- 12.6 The Customer shall pay all costs (at Elliott's rates current from time to time) relating to the loading, transporting and unloading of the Hired Equipment and Sale Items upon delivery and collection of the Hired Equipment to and from the Customer's Site or other place of delivery.
- 12.7 The Customer shall unless otherwise stated in sufficient time and at its own expense provide suitable foundations and ensure the Site is levelled, graded, compacted and free from debris, structures and obstructions for the Hired Equipment, and such foundations shall conform to any instruction, specification or drawing, which may be supplied by Elliott.
- 12.8 Unless the parties agree otherwise in writing, the Customer shall be responsible for any personnel supplied by Elliott who shall be deemed to be acting as an agent of the Customer and the under the Customer's control.
- 12.9 Without prejudice to any other claim or remedy available to Elliott, Elliott shall be entitled to be paid by the Customer on demand for any costs losses and expenses incurred by Elliott as a result of the Customer failing to comply with clause 12.1 to clause 12.7, including any overhead recovery, abortive suspension and delay costs and charges, and costs in relation to transport labour storage and crane hire.
- 12.10 Unless Elliott has agreed in writing to the contrary with the Customer:
- (a) Elliott shall not be under any obligation to provide any additional plant lifting gear or special apparatus, other than that carried by the delivery or collection vehicle, required for siting any Hired Equipment;
  - (b) Elliott shall not be under any obligation to provide power or labour, other than that carried by the delivery or collection vehicle;
  - (c) the Customer warrants that any special appliances required for siting the Hired Equipment, which are not carried out by the delivery or collection vehicle, will be provided by the Customer or on the Customers behalf;
  - (d) Elliott shall be under no liability whatever to the Customer for any damage whatever or however caused, if Elliott is instructed to load or unload any Hired Equipment requiring special appliances, which in breach of the warranty in 12.10(c) above, have not been provided by the Customer or on the Customers behalf; and
  - (e) the Customer shall make available to Elliott upon provision of the vehicle competent personnel to fully manage the lifting operation associated with the

- loading and unloading undertaken by the vehicle, having previously planned the predicted lifting operation in accordance with BS7121: Part 1:1989 and Part 4:1997.
- 12.11 The Customer shall bear the full cost of any additional plant lifting gear or special apparatus hired by Elliott for the purpose of siting or removing the Hired Equipment.
- 12.12 Elliott may provide additional plant lifting gear by entering into a contract under the Contractors Plant Association Model Conditions for the Hiring of Plant ("CPA Model Conditions") (or any other conditions reasonably acceptable to Elliott) with a contractor (the "Contractor") who will undertake the lifting operation on Elliott's behalf in accordance with BS 7121 – Safe Use Of Cranes, Part 1:1989 and Part 4:1997 where applicable, and the Customer shall indemnify Elliott in full for all costs damages losses or liabilities arising out of or connected with the entering into and performance of the contract with the Contractor.
- 12.13 The Contractor will be responsible for the management and planning of the lifting operation (undertaking a "Contract Lift") notwithstanding the Customer's responsibilities under BS 7121.
- 12.14 Where, in Elliott's opinion, the ground in and around the Site (including all private roadways accesses main pipes manholes weighbridges or approaches under through or over which Elliott its servants agents or contractors might have to pass in the performance of any obligation) is soft or otherwise unsuitable the Customer shall in sufficient time and at its own expense supply and lay a surface in a suitable position for the Hired Equipment to travel over or stand on during the loading and unloading at the Site.
- 12.15 Connection and disconnection of mains services on Site and the suitability of those services are the responsibility of the Customer unless otherwise agreed between the parties in writing.
- 12.16 The Customer shall be responsible for obtaining any necessary permissions, consents or authorisation from any owner or occupier of the Site or any other land where access is required for the entry into the Site and the siting of the Hired Equipment or Sale Item on the Site. The Customer shall indemnify Elliott against all costs damages losses and liabilities incurred by Elliott as a result of a claim made by any person firm or company (including Elliott) arising out of or connected with the delivery, collection, movement, loading, unloading, siting or installation of the Hired Equipment or Sale Items on the Site except where such cost, losses and liabilities arise solely and directly from any negligent act or omission of Elliott.
- 12.17 The Customer authorises Elliott to accept the signature on delivery and collection of the Hired Equipment or Sale Item of any person reasonably holding themselves out to be the Customer's representative whether such person be so authorised or not.

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**13. Subcontracting**

Elliott may subcontract any part of its obligations under the Agreement.

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**14. Maintenance, alterations, repairs, testing and inspections, loss and damage**

- 14.1 The Customer will at its own expense, service, clean and maintain the Hired Equipment in good and substantial repair and condition (including cosmetic), fair wear and tear excepted. Elliott shall not be obliged to repair or replace any Hired Equipment due to fair wear and tear (including cosmetic) except to the extent that such fair wear and tear adversely impacts the safe use of the Hired Equipment.
- 14.2 In the case of Modular equipment:
- (a) the respective responsibilities of Elliott and the Customer for repairs are set out in the document entitled Modular Equipment Maintenance Responsibility provided with the Agreement and the Customer shall carry out such repairs or works that are identified as being the Customer's responsibility; and
- (b) where the Minimum Hire Period is 3 years or more, the Customer shall redecorate and refurbish the Hired Equipment in a manner and in the time specified by Elliott.
- 14.3 The Customer will ensure that at collection the Hired Equipment is in the following condition ("Collection Ready Condition") otherwise Elliott may charge the Customer additional charges and/or additional Hire Charges:
- (a) Hired Equipment must be in a clean state;
- (b) the Hired Equipment must be disconnected from all utilities;
- (c) any effluent tanks must have been emptied and flushed through;
- (d) all of Elliott's 360° Service Items and other accessories must be laid down or otherwise secured. The Customer will be responsible for any damage to 360° Service Items or accessories that occurs in transit resulting from failure to comply with this requirement;
- (e) all items or materials which are not Hired Equipment must be removed from the Hired Equipment. Any items or materials left in the Hired Equipment after collection may be disposed of by Elliott. If Elliott disposes of, stores and/or returns items or materials to the Customer it will be subject to additional charges at Elliott's then current rates;
- (f) all supplied keys must be returned to Elliott on collection, otherwise a charge will be automatically applied to cover our costs of replacing keys and locks at Elliott's then current rates.
- 14.4 If the Hired Equipment is not returned in the condition described in clauses 14.1, 14.2, or 14.3, as applicable, then the Customer will pay Elliott its reasonable costs for cleaning the Hired Equipment and rectifying any damage to the Hired Equipment.
- 14.5 The Customer is responsible for the safe keeping and operation of Hired Equipment during the Hire Period and for its return to Elliott at the termination of the Hire Period. If the Customer fails to return the Hired Equipment for whatever reason the Customer shall be liable to Elliott for:
- (a) the full replacement value of equivalent new equipment to that of the Hired Equipment, together with all costs arising there from; and
- (b) the Hire Charges (or relevant proportion) until payment of the costs under clause 14.5(a).
- 14.6 Elliott shall be entitled to inspect, maintain and service the Hired Equipment at any time with reasonable notice and if the Hired Equipment is damaged, Elliott may (at its discretion) repair the Hired Equipment at the Customer's expense or repossess the Hired Equipment and charge the Customer for any repair; or recover the whole cost of replacement with equivalent new equipment.
- 14.7 The Hired Equipment will not be altered or repaired in any way by the Customer unless Elliott agrees in advance in writing.
- 14.8 Elliott will be entitled to charge the Customer all reasonable costs incurred in attending the Site to undertake any maintenance or repairs to Hired Equipment unless such costs result solely from the fair wear and tear of the Hired Equipment or negligence of Elliott.
- 14.9 The Customer shall be responsible throughout the Hire Period for carrying out all statutory inspection tests in accordance with any appropriate regulations. This includes but is not limited to electrical, PAT, gas and water services and electrical appliance testing. The Customer shall indemnify Elliott in full for all costs damages or losses howsoever caused arising out of or connected with the failure by the Customer to comply with any such statutory inspection tests or regulations.
- 14.10 The Customer shall be responsible for all acts and omissions of, and any injury or damage caused by, its employees, agents and contractors in the handling, use, presence in or occupancy of any Hired Equipment. The Customer shall indemnify Elliott for any claims made by or against, or costs losses or liabilities incurred by, Elliott as a result of any act or omission of the Customer, its employees, agents or contractors in connection with this Agreement.

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**15. 360° Service Items**

- 15.1 Elliott shall use reasonable endeavours to meet any performance dates for the Services specified in the Hire Contract or the EHQ, but any such dates shall be

estimates only and time shall not be of the essence.

- 15.2 Elliott warrants to the Customer that the Services will be provided using reasonable care and skill, during normal working hours.
- 15.3 The Customer must promptly notify Elliott of any changes which affect or may affect the Customer's systems or working environment at the Site; for example, changes to the fabric of the building or changes to internal layout. Elliott shall be entitled to inspect the Site and perform additional works (at the Customer's cost) required to ensure the 360° Service Items to which a Service relates continue to properly function.
- 15.4 All wiring and cable infrastructure, components, spares or refills required as part of the Service shall, unless otherwise agreed in the Hire Contract, or if spare parts and/or refills are included but required as a result of neglect, tampering, misuse or discharge of any 360° Service Items, shall be supplied by Elliott at the Customer's cost and charged at Elliott's standard rates.
- 15.5 All 360° Service Items shall be deemed to be complete, in good order and condition and to the Customer's satisfaction unless notification of any defect is received by Elliott within 48 hours of the relevant 360° Service Item being delivered to Site.
- 15.6 To the extent Elliott is responsible under this Agreement for any malfunction, defect, failure or poor performance of the 360° Service Items or performance of the Services, Elliott's liability shall be limited to repairing or replacing the 360° Service Items or relevant part or re-performing or completing the Service (as applicable).
- 15.7 Save as provided below, Elliott only warrants 360° Service Items to the extent of and subject to any limitations and exclusions (to the extent permitted at law) in any warranty provided to Elliott for the benefit of the Customer by the manufacturer or supplier for the relevant 360° Service Item.
- 15.8 If any 360° Service Item is sold by Elliott and purchased by the Customer ("Sale Item") as stated in the Hire Contract, Elliott warrants that on delivery the 360° Service Item shall conform in all material respects with its description as supplied by Elliott and be free from material defects in design, material and workmanship.
- 15.9 Elliott shall not be liable for the 360° Service Item's failure to comply with the warranty in clause 15.8 if:
- (a) the Customer makes any further use of such 360° Service Item after giving a notice in accordance with clause 15.5;
  - (b) the defect arises because the Customer failed to follow Elliott's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the 360° Service Item or (if there are none) good trade practice;
  - (c) the Customer alters or repairs such 360° Service Item without the written consent of Elliott;
  - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - (e) the 360° Service Item differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
  - (f) if the Customer fails to comply with any other applicable provision of this Agreement.
- 15.10 The terms of clause 15.7 to 15.9 shall apply to any repaired or replacement 360° Service Items supplied by Elliott under clause 15.6.
- 15.11 The price for Sale Items shall be the price set out in the Hire Contract. Elliott will invoice the Customer after completion of delivery and such invoice shall be paid in accordance with clause 6.10.

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**16. Notice of Accidents**

If any Hired Equipment is involved in any accident resulting in injury to persons or damage to property (including the Hired Equipment), the Customer must immediately notify Elliott by telephone with confirmation in writing to [accidentandincident@as.elliottuk.com](mailto:accidentandincident@as.elliottuk.com) and entitled "Important Legal Notice of Accident", and no admission, offer, promise of payment or indemnity shall be made by the Customer to any third party without Elliott's consent in writing.

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**17. Compliance with Regulations and Third Party Rights**

- 17.1 The Customer is solely responsible for applying for, obtaining and complying with all obligations imposed by any law, Act of Parliament, statutory instrument, statutory regulations, and all third party rights in relation to the delivery, loading, unloading, installation, use and removal of the Hired Equipment or Sale Item including all building regulations derived from the Building Act 1984, the Offices Shops and Railway Premises Act 1963, The Health and Safety at Work etc. Act 1974, the Town and Country Planning Acts, Regulatory Reform (Fire Safety) Order 2005 and all obligations and third party rights relating to the purposes for which the Hired Equipment or Sale Item is used, or to its condition, delivery, siting or removal. The Customer shall comply with all instructions issued by Elliott or any of its employees, agents or subcontractors.
- 17.2 The Customer shall not use the Hired Equipment for any unlawful purpose.
- 17.3 The Customer shall indemnify Elliott in full for all costs damages or losses howsoever caused arising out of or connected with the failure by the Customer to comply with this clause 17.

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**18. Variations**

Elliott will only perform a variation on written instruction from the Customer and only after the Customer has agreed in writing any price variation notified by Elliott within seven days.

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**19. Title and risk**

- 19.1 The Hired Equipment will at all times remain the property of Elliott and the Customer will have no right, title or interest in or to the Hired Equipment (except for the right to possession and use under this Agreement).
- 19.2 Elliott retains the right to affix a mark or plate on any Hired Equipment identifying it as Elliott's property (or that of its subcontractors, suppliers or lessors) and the Customer shall not remove, deface or cover up the same.
- 19.3 The Customer shall not be permitted to affix any mark or plate on any Hired Equipment unless prior written authority has been given by Elliott. If such authority is given, the Customer will be responsible for the cost of rectification or reinstatement at the termination of the Hire Period.
- 19.4 The Customer shall ensure all Hired Equipment is safe at all times and without risk to health.
- 19.5 The risk of loss, theft, damage or destruction of the Hired Equipment will pass to the Customer from the delivery of such Hired Equipment to the Site and will remain at the sole risk of the Customer for the duration of the Hire Period and until the Hired Equipment is returned to the control of Elliott.

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**20. Limitation of liability**

- 20.1 Without prejudice to clause 20.2, Elliott's maximum aggregate liability for breach of the Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the aggregate amount received by Elliott by way of Hire Charges under this Agreement and the applicable Hire Contract during the 12 months prior to the occurrence of such cause.
- 20.2 Nothing in this Agreement shall exclude or in any way limit:
- (a) either party's liability for death or personal injury caused by its own negligence; or
  - (b) either party's liability for fraud or fraudulent misrepresentation.
- 20.3 The Agreement sets forth the full extent of Elliott's obligations and liabilities in respect of hiring of Hired Equipment, the provision of any Service and the sale of any Sale Item. 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 Elliott except as specifically stated in the Agreement. Any condition, warranty or other term concerning the Hired Equipment, Sale Item or any Service which might otherwise be implied into or incorporated within this Agreement, whether by statute, common law or

otherwise, is expressly excluded to the fullest extent permitted by law.

- 20.4 Without prejudice to clause 20.2, Elliott shall not be liable under this Agreement for any: loss of profit; loss of revenue; loss of business; or indirect or consequential loss or damage, in each case, however caused, even if foreseeable.
- 20.5 If the Customer has any claim against Elliott under the Agreement the Customer must give notice to Elliott as soon as reasonably practicable after the claim first arises.

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**21. Specification and Copyright**

- 21.1 The specifications, drawings, data, literature and statements as to dimensions, suitability, performance or otherwise issued by Elliott in connection with the Hired Equipment are offered in good faith but are intended to be approximate only and the Hired Equipment is supplied subject to no conditions nor shall it carry any guarantee or warranty as to dimensions, quality, fitness, performance or suitability.
- 21.2 The Customer is responsible for the correct selection of the Hired Equipment and while Elliott may supply drawings make recommendations or provide assistance, the Customer shall not rely on Elliott and shall rely solely on such expertise as may be available to the Customer from its own or other technical sources.
- 21.3 The copyright in drawings, data and literature relating to the Hired Equipment and Elliott's goods and services shall remain the property of Elliott and such drawings, data and literature and Elliott's manufacturing and operating techniques and its pricing shall not be disclosed or used except as necessary for the purpose of application and use by the Customer of the Hired Equipment and for compliance with this Agreement.

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**22. Force Majeure**

Elliott shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control and, if Elliott is unable to perform for a period of four weeks, Elliott may terminate the Agreement or such part of the Agreement that relates to the affected Hired Equipment, Sale Item or Service (as applicable).

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**23. No assignment, sale or transfer by Customer**

- 23.1 The Customer shall not, without the consent in writing of Elliott, assign its rights under the Agreement or subcontract any part of the performance of the Agreement.
- 23.2 The Customer shall not, without the consent in writing of Elliott, sell or offer for sale, assign, part with possession, or re-hire, mortgage, pledge or otherwise deal with the Hired Equipment and shall indemnify Elliott against all losses, damages, costs, charges and expenses that may result from the failure to comply with this clause 23.2.
- 23.3 The Customer will not remove the Hired Equipment from the Site without the authority of Elliott; such authority must be confirmed in writing prior to such movement taking place.

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**24. Repossession and indemnity**

- 24.1 If the Customer is in breach of the Agreement then Elliott can repossess the Hired Equipment and terminate this Agreement.
- 24.2 The Customer shall indemnify and release Elliott against all claims, losses or liabilities whatsoever as a result of or in connection with Elliott taking possession of the Hired Equipment.
- 24.3 The Customer agrees that Elliott may at any time without notice enter the Customer's premises or any other premises leased or otherwise occupied by the Customer in order to repossess the Hired Equipment pursuant to the Agreement.

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**25. On-Hire / cross-hire of Hired Equipment**

- 25.1 Except as expressly agreed in the Hire Contract, the Customer must not on-hire or cross-hire the Hired Equipment to a third party without the prior written consent of Elliott, which Elliott may withhold in its absolute discretion, and any consent given by Elliott will be on the condition that the Customer protects Elliott's title in the Hired Equipment in such manner as Elliott may reasonable require.
- 25.2 The on-hiring or cross-hiring of the Hired Equipment does not relieve the Customer from any liability or obligation under this Agreement. The Customer remains liable to Elliott for the acts and omissions of any sub-hirer or cross-hirer (as the case may be), and employees and agents of sub-hirer or cross-hirer as if they were the Customer's acts or omissions.
- 25.3 The Customer shall indemnify Elliott for any claims made by or against, or costs losses or liabilities incurred by, Elliott as a result of any act or omission of the Customer, its employees, agents or contractors in connection with any on-hiring or cross-hiring (with or without Elliott's consent) of the Hired Equipment.

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**26. Hired Equipment not for sale**

The Hired Equipment is not for sale to the Customer.

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**27. Confidentiality**

- 27.1 The Customer undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of Elliott, except as permitted by clause 27.2.
- 27.2 The Customer may disclose Elliott's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Customer's obligations under the Agreement. The Customer shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses Elliott's confidential information comply with this clause 27; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 27.3 The Customer shall not use Elliott's confidential information for any purpose other than to perform its obligations under the Agreement.
- 27.4 For the purpose of this clause 27 "confidential information" means all information in respect of Elliott's business and financing including, but not limited to, any ideas, business methods, finance, prices, financial marketing development or manpower, plans, drawings, market opportunities, product information, design rights, customer information, trade secrets, details, computer systems and software know-how on any medium and software listings of any party and other matters connected with the products or services manufactured, marketed, provided or obtained by Elliott.

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**28. Interpretation, Governing Law and Jurisdiction**

- 28.1 These Standard Conditions of Hire shall be interpreted without reference to their headings. In the Agreement any reference to "include" "including" or "in particular" or any similar term shall be construed without limitation. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 28.2 The Agreement any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English Law. The Customer irrevocably submits to the exclusive jurisdiction of the English Courts.

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**29. Waiver and Amendment**

A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing. The provisions of this Agreement will not be amended in any way unless agreed in writing between the parties.

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**30. Severability**

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If any provision or part-provision of this Agreement 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 pursuant to this clause shall not affect the validity and enforceability of the rest of this Agreement.

**31. Entire Agreement**

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The Agreement 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. Each party agrees that it 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 Agreement.

**32. Notices**

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Any written communication between the parties shall be effective and shall be sufficiently served if sent by letter whether delivered by pre-paid post, as an email or delivered by hand to the address of the other party as referred to in the Hire Contract and shall be deemed to have been received: if sent by post 2 working days after posting; if sent by email 1 business day after transmission; and if delivered by hand at the date of delivery.

**33. Disputes**

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33.1 The parties shall attempt, in good faith, to resolve any dispute arising out of or in connection with this Agreement ("Dispute") promptly by negotiation which shall be conducted as follows: (a) if a Dispute arises in the opinion of either party, the party in question may give written notice to the other party that the dispute has arisen ("Dispute Notice"); (b) the Dispute shall be referred, by the referring party, first to the operational managers of each of the parties for resolution; and (c) if the Dispute cannot be resolved by the operational managers of the parties within 14 days after the Dispute has been referred to them, either party may refer the Dispute to the senior managers or directors for resolution.

33.2 If, within 28 days of the Dispute Notice, the parties have failed to agree on a resolution, either party may refer any Dispute for mediation.

33.3 Notwithstanding clause 33.2, or if and to the extent that the parties do not resolve any Dispute or any issue in the course of any mediation, either party may commence or continue court proceedings in respect of such unresolved Dispute or issue.

33.4 Nothing in this clause 33 shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

**34. CONSUMER – THIS CLAUSE APPLIES TO CONSUMERS ONLY**

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34.1 Where the Customer is acting as a consumer under the Consumer Rights Act 2015 (a consumer is an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession), the terms of this Agreement shall only apply to the extent legally permitted.

34.2 Elliott does not exclude or limit its liability where it is unlawful to do so.

34.3 Elliott is responsible to a Customer for foreseeable loss and damage caused by Elliott. If Elliott fails to comply with this Agreement, it is responsible for loss or damage the Customer suffers that is a foreseeable result of Elliott not complying with this Agreement or arises from Elliott failing to use reasonable care and skill, but Elliott is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if Elliott and the Customer knew it might happen at the time the Agreement is made or it is obvious that it will happen.

34.4 Should any defect occur in the Hired Equipment, other than one for which the Customer is responsible, Elliott will at its option either, replace or repair the Hired Equipment (at no charge to the Customer) as soon as is reasonably practicable. Elliott shall not replace, repair or service any Hired Equipment until any outstanding Hire Charges have been paid in full and cleared funds.

34.5 For further information about your statutory rights and other legislation, contact your local authority Trading Standards Department or Citizens Advice Bureau.

34.6 LATE OR MISSED PAMENTS – Not making payments or paying late could have serious implications and may make it more difficult for you to obtain credit.