

Standard Hire and Sale Contract Terms and Conditions of Equipment

<p>1. DEFINITIONS:</p> <p><i>Company:</i> Hydra Capsule Limited. The relevant entity applies in whichever country the hire contract is executed.</p> <p><i>Customer:</i> the person/entity hiring the Equipment as named in the Hire Contract.</p> <p><i>Equipment:</i> the items for hire listed in the Hire Contract.</p> <p><i>Hire Contract:</i> the Hire Contract Specifications, the Standard Terms and Conditions, any applicable Special Terms and Conditions and the invoice.</p> <p>2. HIRE DURATION:</p> <p>2.1 The Customer is entitled to use the Equipment for the period of time specified in the Hire Contract. Any variation to this period must be agreed by the Company.</p> <p>2.2 The hire period commences when the Customer takes possession of the Equipment or when the Company delivers the Equipment in accordance with the Customer's instructions.</p> <p>2.3 The hire period ends when the Customer returns the Equipment to the Company or when the Company issues the Customer with an off-hire number.</p> <p>2.4 The Customer must return the Equipment to the Company on the Expected Off-Hire date specified in the Hire Contract, unless the Customer has agreed with the Company that the Company will collect the Equipment from the Customer and has notified the Company that the Equipment is ready for collection. When notifying the Company that the Equipment is ready for collection, the Customer must obtain an 'off-hire' number, failing which the Customer will be deemed not to have notified the Company that the Equipment was ready for collection. Any change to the Off Hire date must be agreed by the Company.</p> <p>3. TITLE TO EQUIPMENT:</p> <p>3.1 The Customer acknowledges that in all circumstances the Company retains title to the Equipment and the rights of the Customer to use the Equipment are as a bailee only.</p> <p>3.2 The Customer will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Equipment in any way which is inconsistent with the rights of the Company as owner of the Equipment.</p> <p>4. HIRE AND OTHER CHARGES:</p> <p>4.1 Discounts Agreed in Writing: The only discounts available to the Customer shall be those agreed in writing by the Company. If the Customer breaches any of these terms and conditions then any discount on any unpaid invoice is automatically revoked and the non-discounted price is payable for all Hire Charges from that time onwards.</p> <p>4.2 Hire: The Customer will pay the Company the hire charges set out in the Hire Contract. The Customer is not entitled to any discount or rebate if the Equipment is not used by the Customer for the entire hire period.</p> <p>4.3 Consumables: The Customer shall be liable for the reasonable cost of consumables provided by the Company and used by the Customer during the hire period.</p> <p>4.4 Tax and Government Charges: The Customer shall be liable for stamp duty (Where applicable), GST and all other applicable taxes, duties, levies, penalties and any other government charges imposed on the Hire Contract or in respect of the hire period.</p> <p>4.5 Credit Card Payments: The Customer acknowledges that the Company may impose a charge for accepting payments by credit card.</p> <p>4.6 Delivery: If the Customer requires the Company to deliver, collect or install the Equipment, the Customer shall be liable for the cost of delivery, collection or installation.</p> <p>4.7 Late Return of Equipment: If the Customer does not return the Equipment to the Company premises until after 8.00 a.m. on the day following the Expected Off-Hire date specified in the Hire Contract, the Customer will be charged a minimum of an additional full day hire if the Equipment is returned after 12 noon.</p> <p>4.8 Payment Due Date: The Customer is required to pay all fees, charges and costs that may become due and payable under the Hire Contract within 28 days of the invoice date.</p> <p>4.9 Late Payment: If a Customer does not pay the amount of the Hire Contract invoice by the payment due date, a late payment fee of 10% per month may be imposed. In addition, the Customer will be liable to indemnify the Company for all expenses and legal costs incurred by the Company as a result of the Customer's failure to pay the amount of the Hire Contract invoice by the payment due date.</p> <p>5. CUSTOMERS' OBLIGATIONS:</p> <p>5.1 Possession and Use by Customer: The Hire Contract is personal to the Customer and the Customer will not allow any other person or entity to use or have possession of the Equipment at any time during the hire period.</p> <p>5.2 Operation of Equipment: The Customer warrants that at all times it will:</p> <ul style="list-style-type: none"> a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions b) ensure persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are licensed to use it c) display, maintain and draw attention to safety signs and instructions (as required by law), ensure that instructions are observed and signs are not removed or defaced d) ensure all persons operating the equipment wear suitable clothing and protective equipment as required or recommended by the manufacturer or by the Company e) ensure that no persons operating the Equipment are under the influence of drugs or alcohol; and f) conduct a site hazard assessment prior to using the Equipment at a site <p>5.3 Cleaning and Maintenance: The Customer must:</p> <ul style="list-style-type: none"> (a) clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the manufacturer's and the Company's instructions; and (b) not in any way alter, modify, tamper with, damage or repair the Equipment without the Company's written consent 	<p>5.4 Safekeeping: The Customer must ensure that during the Hire Period (and until the Equipment is collected by the Company after the issue of an off-hire number) the Equipment is stored safely and securely and is protected from theft and seizure.</p> <p>5.5 Alteration and Identifying Marks: The Customer must not alter, deface or erase any identifying mark, plate or number on the Equipment.</p> <p>5.6 Suitability: The Customer is deemed to be satisfied as to the suitability, condition and fitness for purpose of the Equipment unless the Company is otherwise notified within 24 hours of the commencement of the hire period.</p> <p>5.7 Inspections: The Customer consents to the Company inspecting the Equipment from time to time during the hire period. In addition, the Customer may arrange a joint inspection with the Company at the end of the hire period.</p> <p>5.8 Safe Loading: The Customer will safely secure all Equipment (or items loaded in or on the Equipment) loaded in or on the Customer's vehicle.</p> <p>5.9 Location: The Customer must not remove the Equipment from the State in which it was hired without the Company's written consent.</p> <p>6. LOST, STOLEN OR SAMAGED EQUIPMENT:</p> <p>Subject to Clause 10, if the Equipment is lost, stolen or damaged during the hire period (and until the Equipment is collected by the Company after the issue of an off-hire number), the Customer shall be liable:</p> <ul style="list-style-type: none"> (a) for any costs incurred by the Company in repairing or replacing the Equipment; and (b) for any other costs whatsoever incurred by the Company as a result of the loss, theft or damage to the Equipment <p>7. EQUIPMENT BREAKDOWN:</p> <p>7.1 Obligations of Customer: In the event that the Equipment breaks down or becomes unsafe to use during the hire period the Customer shall:</p> <ul style="list-style-type: none"> (a) immediately stop using the Equipment and notify the Company (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment (c) take all steps necessary to prevent any further damage to the Equipment (d) not repair or attempt to repair the Equipment without the Company's written consent <p>7.2 Obligations of the Company: In the event that the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Customer, the Company:</p> <ul style="list-style-type: none"> (a) will take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Customer; and (b) will not impose a hire charge for that portion of the hire period for which the Equipment was broken down or unsafe <p>8. TERMINATION:</p> <p>8.1 The Company may terminate the Hire Contract immediately by notice to the Customer, if:</p> <ul style="list-style-type: none"> (a) the Customer breaches any term of the Hire Contract; or (b) the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business. <p>8.2 The Company may terminate the Hire Contract for any other reason by 24 hours notice.</p> <p>9. RECOVERY OF EQUIPMENT:</p> <p>If the Customer is in breach of the Hire Contract or if the Company has terminated the Hire Contract with the Customer pursuant to clause 8 above, the Company may take all steps necessary (including legal action) to recover the Equipment, including entering the Customer's premises to do so.</p> <p>10. DAMAGE, LOSS AND THEFT WAIVER:</p> <p>10.1 Upon payment by the Customer of a damage waiver fee, the Company shall be responsible for the cost of repairs or replacement of the Equipment, due to loss or damage occurring during the hire period (and until the Equipment is collected by the Company after the issue of an off-hire number), such that:</p> <ul style="list-style-type: none"> (a) in the event of damage or destruction to equipment on hire which is caused by fire, storm, earthquake, collision, accident or burglary, excluding negligence, abuse or misuse, the Company agrees to limit its claim to the greater of 35% of full new replacement value or £1,250.00 for each item; or (b) in the event of theft or loss of equipment excluding theft or loss as a result of negligence, abuse or misuse (provided the Customer has reported the incident promptly to the police and Company) the Company agrees to limit its claim to the greater of 35% of full new replacement value or £1,250.00 for each item. <p>10.2 This clause will not apply to loss or damage arising from damage to equipment during transit (including while on any wharf, bridge or over water) or while goods are being loaded or unloaded from any vehicle or vessel.</p> <p>10.3 This clause in no way entitles the Customer, or implies availability of compensation from the Company for any liability incurred by the Customer in relation to the use of the Equipment.</p> <p>10.4 This clause will not continue to operate after the termination of the Hire Contract unless an extension is granted by the Company in writing and an additional fee is paid.</p> <p>10.5 The Customer is not required to pay a damage waiver fee if it produces to the Company a current Certificate of Currency for an appropriate policy of insurance for damage to or arising from the hire of the Equipment in an amount not less than the full new replacement cost of the Equipment.</p>	<p>11. INDEMNITIES AND EXCLUSION OF LIABILITIES:</p> <p>11.1 Subject to clause 11.2 and except as expressly provided to the contrary in the Hire Contract all terms, conditions, warranties, undertakings, inducements or representation whether express or implied, statutory or otherwise, relating to the Company's obligations under the Hire Contract are excluded.</p> <p>11.2 Where any Act of Parliament implies a term, condition or warranty in this Hire Contract and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty shall be deemed to be included in this Agreement provided that the liability of the Company for breach of the term, condition or warranty is limited to the repair or replacement of the Equipment or the supply of substitute Equipment (or the cost of doing so).</p> <p>11.3 Subject to clause 11.2, the Company shall not be under any liability to the Customer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or this Hire Contract.</p> <p>11.4 The Customer is liable for and indemnifies the Company against all liability, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/ client basis, determined without taxation, assessment or similar process and whether incurred or awarded against the Company) arising from or incurred in connection with Customer's hire and use of the Equipment or its breach of the Hire Contract.</p> <p>11.5 Each indemnity in this Hire Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Contract. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Contract. The Customer must pay on demand any amount it must pay under an indemnity in this Hire Contract.</p> <p>11.6 For the purposes of clauses 11.3 to 11.5, use of Equipment operated by an Operator supplied by the Company will be use of the Equipment by the Customer.</p> <p>12. DIRECTORS GUARANTEE:</p> <p>Only required for Registered Companies/Trusts etc. Please be aware that an application may not be considered if the Directors Guarantee has not been signed and witnessed.</p> <p>13. SEVERABILITY:</p> <p>If any part of this agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.</p> <p>14. GOVERNING LAW:</p> <p>The Hire Contract is governed by the laws of United Kingdom where the Hire Contract is entered into by the parties and each party submits to the exclusive jurisdiction of the courts of United Kingdom.</p> <p>15. ENTIRE AGREEMENT:</p> <p>The Hire Contract issued to the Customer comprises the entire agreement of the parties.</p> <p>16. NO RELIANCE:</p> <p>(Acting on the Company's behalf) has not made any representation or other inducement to it to enter into this Hire Contract and that it has not entered into this Hire Contract in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained herein.</p> <p>17. VARIATION:</p> <p>The Company may at any time vary the Hire Contract by giving the Customer 30 day's written notice of its intention to do so.</p> <p>18. PRIVACY:</p> <p>The Customer provides its consent for the Company to disclose personal information about the Customer to other entities in the Hydra Capsule Limited.</p> <p>19. MISCELLANEOUS:</p> <p>19.1 No variation of these terms and conditions shall bind either party unless confirmed by the Company in writing.</p> <p>19.2 Any document which by these terms and conditions may be given by the Company may be served or rendered by leaving it at or posting it to the address of the Customer as stated in the Hire Contract or last notified by the Customer in writing to the owner and shall be deemed to have been served or rendered at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by a manager, director or solicitor of the Company on behalf of the Customer.</p> <p>19.3 Time is to be of the essence of all obligations of the Customer in these terms and conditions.</p> <p>19.4 No delay or omission to exercise any right, power or remedy accruing to the Company upon any continuing breach or default under this agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any right of the owner to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.</p> <p>19.5 A statement in writing made up from the books of the Company and signed by any director, secretary or credit manager of the Company of the amount due or owing by the Customer to the Customer as at the date mentioned in such statement shall be prima facie evidence that such amount is due and owing without it being necessary to produce any books or vouchers to verify the same.</p> <p>19.6 Any credit accommodation granted by the Company to the Customer may be withdrawn at any time and for any reason without notice and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.</p>
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