

TRIPTEX LIMITED – TERMS AND CONDITIONS OF RENTAL

1. **Definitions and Interpretation**
- 1.1 Unless the context does not so permit the following expressions have the following respective meanings:-
- 1.1.1 "Additional Document means any document (other than the Order and these Terms and Conditions) which Triptex and the Customer agree shall form part of the Contract;
- 1.1.2 "Customer" means the person, firm or corporation hiring the Products from Triptex;
- 1.1.3 "Contract" means any Contract between Triptex and the Customer for the renting to the Customer of the Products;
- 1.1.4 "Delivery Date" means the date on which the Products are available for collection by the Customer;
- 1.1.5 "Triptex" means Triptex Limited;
- 1.1.5 "Order" means the written order placed by the Customer to hire the Products or, if no written order is placed, the request form the Customer to hire the Products;
- 1.1.6 "Parties" means Triptex and the Customer, and "Party" means either of them as the context permits.
- 1.1.7 "Rental" means the rental charge payable for the Products;
- 1.1.8 "Products" means the plant or equipment rented by Triptex to the Customer (including the packaging and labelling forming part or supplied by Triptex therewith or any of them or any part thereof as the context permits
- 1.1.9 "Term" means the duration of the hire of the Products specified in the Order and
- 1.1.10 "Working Day" means any day except Saturday, Sunday or any bank, customary, public or statutory holiday in England and Wales.
- 1.2 Words importing the singular include the plural and vice versa, and a reference to any gender includes a reference to all other genders.
- 1.3 Condition headings do not affect the interpretation of these Conditions.
- 1.4 a reference to a statute, statutory instrument, regulation, order or licence is a reference to that statute, statutory instrument, regulation, order or licence as substituted, varied, or re-enacted from time to time.
- 1.5 A reference to "writing" includes any facsimile or electronic mail transmission.
2. **The Contract**
- 2.1 The Contract shall not come into existence until the Order is accepted by Triptex, either by Triptex providing formal written acceptance of the Order to the Customer, or Triptex contacting the Customer, whether in writing or orally, in order to arrange collection of the Products.
- 2.2 These Terms and Conditions comprise the only terms and conditions upon which Triptex rents the Products to the Customer and prevail in full over all other terms and conditions, including any terms or conditions which the Customer at any time purports to apply under any order, confirmation of order, acceptance of quotation, specification or other document, or in any other manner.
- 2.3 No variation to the Contract shall be binding on the parties unless agreed in writing by authorised representatives of the parties.
- 2.4 The Contract shall comprise these Terms and Conditions and the Order, together with any Additional Document. In the event of any conflict between these Terms and Conditions and the Order, the Order shall take precedence, and in the event of any conflict between the Order or these Terms and Conditions and any Additional Document, the Additional Document shall prevail.
- 2.5 Each Order shall be the subject of a separate Contract.
3. **Ordering**
- 3.1 The Customer shall place all Orders in such manner and in such form as Triptex shall specify from time to time.
- 3.2 The Customer shall ensure that each Order
- 3.2.1 specifies the exact Products being ordered;
- 3.2.2 specifies the respective quantities of each of the Products being ordered; and
- 3.2.3 specifies a lead time for delivery of not less than [three] Working Days (unless otherwise agreed in writing) from the submission of the Order.
- 3.3 Triptex is under no obligation to accept any Order, and no Order shall be regarded as having been accepted by Triptex unless Triptex has accepted it in accordance with Condition 2.1 applies. Any Order which fails to comply with the requirements of Condition 3.2 will not be accepted by Triptex and is deemed automatically rejected..
4. **Rental**
- Triptex shall to deliver and provide on hire to the Customer, and the Customer agrees to hire, accept delivery of and pay the Rental in relation to, the Products, in accordance with and subject to the terms of the Contract.
5. **Delivery**
- 5.1 Unless otherwise expressly agreed in writing, the Customer shall collect the Products from Triptex and load the Products onto its delivery vehicles. The Products shall be collected between 09.00 and 17.00 hours on the Delivery Date. Triptex shall notify the Customer of the Delivery Date at the time when the Order is accepted by Triptex. Delivery of the Products shall be deemed to have taken place when Triptex places the Products at the disposal of the Customer or, if earlier, at 17.00 hours on the date on which the Products are available for collection.
- 5.2 Immediately upon delivery having been deemed to have taken place pursuant to Condition 5.1:-
- 5.2.1 Risk in the Products shall pass to the Customer; and
- 5.2.2 Triptex shall have no further obligations in relation to the care or storage of the Products. However, if Triptex elects to undertake such obligations, the Customer shall be responsible for and shall fully indemnify Triptex in respect of all reasonable costs and expenses incurred by Triptex and arising from the undertaking of such obligations.
- 5.3 If the Products remain in the possession of Triptex after a period of two Working Days has elapsed from the date on which delivery is deemed to have taken place pursuant to Condition 5.1, Triptex shall, without limiting any other right or remedy that it may have against the Customer, have the right to rent, sell or otherwise dispose of them to a third party or to dispose of them in any manner in which it sees fit, in either case without incurring any obligation to rent replacement Products to the Customer.
- 5.4 The time for the delivery of the Products shall not be of the essence of the Contract, and the Customer acknowledges that Triptex shall not be liable to it for any losses, costs, damages, expenses or charges directly or indirectly suffered or incurred by the Customer as the result of any delay in the delivery of the Products, neither shall any such delay entitle the Customer to terminate or rescind the Contract.
6. **Title to the Products**
- 6.1 Triptex shall at all times retain title to the Products, and the Customer shall have or acquire no interest of any kind in the Products save as is expressly provided in these Terms and Conditions.
- 6.2 The Customer:-
- 6.2.1 shall not remove, deface or obscure any plate, label or other form of marking that identifies the as being the property of Triptex;
- 6.2.2 shall maintain the Products in satisfactory condition and keep it insured in the name of Triptex on an "all risks" basis in an amount of cover equal to its full replacement value;
- 6.2.3 shall produce to Triptex or its representatives for inspection on demand a copy of any policy of insurance entered into or maintained in compliance with the Customer's obligations under Condition 6.2.3 together with copy receipts for the payment of premiums;
- 6.2.4 shall comply in full with the terms of any insurance policy under which the Products is insured as required by Condition 6.2.3 and not do anything or omit to do anything where such act or omission might reasonably be expected to be likely to cause any relevant policy of insurance to be avoided or vitiated;
- 6.2.5 shall not surrender possession or control of the Products to any third party;
- 6.2.6 hereby grants to Triptex and its representatives an irrevocable licence at any time to enter any premises where the Products may be located in order to inspect them (and where the Customer does not own or control such premises the Customer hereby undertakes to procure such right) and, following termination or expiry of the Contract, to recover them.
- 6.3 The Customer shall not sell, offer for sale, assign, mortgage, pledge, otherwise encumber or in any other way deal with or dispose of the Products, nor permit or suffer any of the foregoing to be done by any third party.
7. **Use of the Products**
- 7.1 The Customer shall, and shall procure that its employees, officers, contractors, agents or representatives, at all times during the Term:-
- 7.1.1 install and use the Products in a skilful and proper manner, and in accordance with any installation or operating instructions or guidelines issued for it;
- 7.1.2 ensure that the Products are installed, operated and used by competent, experienced, trained and (where appropriate) qualified personnel;

		10.1	For the avoidance of doubt, nothing in the Contract shall serve to exclude or limit the application of the implied terms as to satisfactory quality set out in the Supply of Goods and Services Act 1982.
7.1.3	keep the Products at its own expense and at all times in good repair, condition and working order, properly serviced and maintained in full accordance with all and any current servicing or maintenance guidelines or instructions issued in relation to it by competent, experienced, trained and (where appropriate) qualified personnel, and at its own cost and expense to obtain and fit all such new parts as shall from time to time be required and, without prejudice to Condition 10, if the Products are destroyed, damaged or lost, at its own cost and expense repair them or (if the Products affected are lost or damaged beyond economic repair) replace them with products that comply in all respects with the terms of this Agreement, such replacement equipment to be regarded as "Products" for the purposes of this Agreement;	10.2	Triptex warrants that the Products will, upon delivery, comply with all relevant statutes, regulations and other matters having the force of law (whether specifically relating to the Products or otherwise).
7.1.4	not make any alteration to the Products or remove any existing component from them unless it is replaced immediately, or if such removal is undertaken for the purposes of complying with the Customer's obligations under Condition 7.1.3, any component removed is to be replaced by the same component or by one of a like make and model to that removed or an improved or advanced version of it;	10.3	In the event that the Customer believes that a breach of the implied terms referred to in Condition 10.1 or the warranty set out in Condition 10.2 has occurred then the Customer shall:-
7.1.5	comply at all times with all statutory, regulatory and other obligations of all kinds in relation to the Products and their use arising during the Term;	10.2.1	inform Triptex accordingly in writing within two Working Days of the date of discovery of the alleged breach of warranty. Save as expressly provided in these Conditions Triptex shall be under no liability for any breach of warranty in respect of which the Customer has not complied with this Condition 10.2.1.;
7.1.6	fit to or install with the Products any safety or other equipment required by any applicable law or regulation to be so fitted or installed for the use or operation of the Products; and	10.2.2	at Triptex's option either promptly return to Triptex (at Triptex's reasonable cost) the Products affected or permit Triptex, its officers, employees and representatives to inspect the Products affected at the Customer's or some other agreed premises; and
7.1.7	protect the Products against distress, execution or seizure (or any equivalent or analogous process in any jurisdiction).	10.2.3	provide to Triptex free of charge such facilities, information and assistance as Triptex shall reasonably require in order to verify the nature and cause of any alleged defect in the Products.
7.2	The Customer shall fully indemnify Triptex and keep Triptex fully indemnified from and against all actions, claims, demands, costs (including reasonable legal costs) losses, charges, expenses, damages and liability, however arising, to the extent that the same are suffered or incurred by Triptex as the direct or indirect result of the failure by the Customer, its employees, officers, contractors, agents or representatives to comply with any of the obligations set out in Condition 7.1.		Triptex's sole liability to the Customer in relation to any breach of the above warranties shall be limited, at the option of Triptex, to the replacement of the Products affected as soon as reasonably practicable or refunding to the Customer the Rental of the Products affected.
8.	Rental and Payment	11.	Term and Termination
8.1	Unless otherwise expressly agreed by Triptex in writing, the Rental shall be the rental charge set out in, or determined by reference to the rates set out in, Triptex's price list current at the date when Triptex accepts the Order or, where Triptex has provided a quotation, the rental set out in such quotation.	11.1	The Contract will remain in full force and effect until the expiry of the Term unless terminated earlier in accordance with any other provision of the Contract.
8.2	The Rental shall be exclusive of any Value Added Tax, all other taxes, duties, levies and impositions of whatever nature, and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall if applicable pay in full when it pays for the Products. In addition, Triptex reserves the right to increase the Rental as the result of to a change in or insufficiency of the Customer's instructions or to any variation in the cost of materials, labour, transport duties, taxes, exchange rates or any costs of whatsoever nature between the date on which the Contract comes into existence and the date of delivery or completion of payment.	11.2	Triptex shall be entitled to terminate the Contract with immediate effect by giving notice to the Customer in any of the following circumstances:-
8.3	Triptex shall submit an invoice to the Customer for the Rental plus any additional sums payable pursuant to Condition 8.2 upon the Contract having come into existence..	11.2.1	any sum of money due to be paid by the Customer to Triptex under the Contract remains unpaid upon the expiry of fourteen (14) days from the due date for payment;
8.4	The Customer shall pay the amount stated on each invoice, without any deduction or set-off of any kind, in cleared funds upon or before the delivery of the Products.	11.2.2	the Customer commits any material breach of the Contract, other than any provision relating to the payment of money, and such breach (if capable of remedy) is not remedied within 14 (fourteen) days of the date of the receipt by the Customer of a notice from Triptex specifying the breach in question and requiring it to be remedied;
8.5	If the Customer fails to pay in full the amount stated in any invoice issued by Triptex prior to 17.00 hours on the Delivery Date, the Contract shall be deemed to be terminated automatically without further notice to the Customer.	11.2.3	an order is made or a resolution is passed or adopted for the winding up of the Customer (otherwise than for the purposes of and followed by an amalgamation or reconstruction previously approved in writing), or if a petition is presented for the appointment of any administrator or liquidator (and is not discharged within 14 days) or if a receiver or administrative receiver is appointed with regard to the Customer, or an encumbrancer takes possession of the whole or any part of its undertaking or assets, or if the Customer has a bankruptcy order made against it or becomes insolvent, or if any analogous event shall occur in any territory to whose jurisdiction the Customer is subject; or
9.	Delivery up of the Products	11.2.4	the Customer ceases or threatens to cease, or in the reasonable opinion of Triptex is likely to cease, to carry on the whole or any relevant part of its business or trade.
9.1	The Customer shall, upon the expiry or early termination of the Contract:-	11.3	The expiry or termination of the Contract, howsoever arising, shall not terminate or affect any rights, obligations or liabilities of the parties which have accrued under the Contract prior to the effective date of expiry or termination.
9.1.1	deliver up the Products, serviced and maintained and in good repair, condition and working order as required by Condition 7.1.3; and	11.4	Without limiting the generality of Condition 11.3, in the event of the termination of the Contract pursuant to Condition 0 the Customer shall on demand fully indemnify Triptex and keep Triptex fully indemnified from and against any and all costs, losses, damage and expenses incurred by Triptex, of any kind and regardless of the manner in which the same arose, arising as a consequence of or in connection with the termination of the Contract, including as a consequence of the re-taking of possession of, selling or re-hiring the Products, the enforcement of this Agreement or any attempt by or on behalf of Triptex to do any of those things.
9.1.2	allow Triptex, its agents or representatives access to any premises where the Products might be situated for the purpose of inspecting and removing them, and to carry out any servicing, maintenance, repair or other work to the Products reasonably specified by Triptex so as to put them into good repair, condition and working order as required by Condition 7.1.3..	11.5	The Contract shall, as to any of its provisions remaining to be performed in whole or in part or capable of having effect following termination or performance, remain in full force and effect notwithstanding the termination or expiry of the Contract.
10.	Warranties	12.	Limitations of Liability
		12.1	Subject to Condition 8.2:-
		12.1.1	Triptex's total liability to the Customer in connection with any and all claims arising in relation to any Products

shall not exceed the Rental payable in respect of those Products;

12.1.2 under no circumstances shall Triptex be liable to the Customer for loss of profit, loss of revenue, loss of bargain, loss of business or contract, diminution of goodwill or for any other economic loss (whether direct, indirect or consequential), or for any indirect or consequential loss or damage of any kind; and

12.1.3 save as expressly provided in the Contract all warranties, conditions or other terms implied by statute or common law in relation to the hiring of goods are hereby excluded.

12.2 Nothing in the Contract shall limit or exclude the liability of Triptex:-

12.2.1 for death or personal injury resulting from the negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977) of Triptex;

12.2.2 for fraud or fraudulent misrepresentation; or

12.2.3 for any matter in respect of which it would be unlawful or illegal to exclude or limit its liability.

13. Assignment

13.1 Triptex may assign the Contract or any part of it to any person, firm or company.

13.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Triptex.

14. Force Majeure

Triptex reserves the right to defer delivery of the Products or to cancel the Contract with regard to some or all of the Products in each case without liability to the Customer if it is prevented from or delayed in the delivery of any Products due to circumstances beyond its reasonable control. Provided that, if Triptex is so prevented or delayed for a continuous period in excess of 28 days, the Customer shall be entitled to cancel the Contract by giving notice to that effect to Triptex.

15. Notices

15.1 All communications between the parties regarding the Contract or the Products shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or electronic mail (subject to Condition 15.3):-

15.1.1 in the case of communications to Triptex, to its registered office or such other address as may be notified to the Customer by Triptex; or

15.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in the Order, or if applicable such other address as shall have been notified to Triptex by the Customer.

15.2 Communications shall be deemed to have been received:

15.2.1 If sent by pre-paid first class post, on the second Working Day after posting (exclusive of the day of posting); or

15.2.2 if delivered by hand, on the day of delivery (or, if the actual time of delivery is after 16.00 hours local time or the day of delivery is not a Working Day, on the next Working Day; or

15.2.3 if sent by fax or electronic mail on a Working Day and received prior to 16.00 hours, at the time of transmission, and otherwise on the next Working Day.

15.3 Communications addressed to Triptex shall be marked for the attention of the Managing Director. Any communication not so addressed shall be invalid.

16. General

16.1 The documents specified in Condition 2.4 constitute the entire agreement between Triptex and the Customer for the rental of the Products, and supersede any previous agreements, arrangements, understandings, representations or statements. Each party warrants that it has not entered into the Contract in reliance upon any statement, promise, warranty or representation not having effect as an express provision of the Contract.

16.2 Each right or remedy of Triptex under the Contract is without prejudice to any other right or remedy that it may have whether under the Contract or not.

16.3 Except as expressly provided in these Conditions, the rights and remedies contained in these Conditions are cumulative and shall be in addition to every other right or remedy provided by law or otherwise.

16.4 If any provision of the Contract is found by any court or tribunal of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable it shall be deemed severed and the remaining provisions of the Contract shall continue in full force and effect.

12.5 Any failure or delay by Triptex in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by Triptex of any breach

of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

16.6 The Parties do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16.7 All aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.