

## **Terms & Conditions of Sale**

These terms and conditions of sale, including any special terms and conditions agreed in writing by the parties ("Conditions") shall apply to all Contracts (as defined below) for the sale Goods (as defined below) by JB SURVEY LIMITED registration number 02340409 whose registered office is at Unit 4 Champion House, Wella Road, Basingstoke, RG22 4AG ("Company") to the Buyer (as defined below).

### **1. Interpretation**

**1.1** In these Conditions: "BUYER" means the person who accepts a quotation of the Company for the sale and/or installation of the Goods or whose order for the Goods is accepted by the Company. "GOODS" means the goods (including any instalment of the goods or any parts for them) which the Company is to supply and/or install in an accordance with these Conditions. "COMPANY" means JB Survey Limited. "CONDITIONS" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company. "CONTRACT" means the contract for the purchase and sale of the Goods. "WRITING" includes telex, cable, facsimile transmission electronic data interface and comparable means of communication.

**1.2** Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

**1.3** The heading in these Conditions are for convenience only and shall not affect their interpretation.

### **2. Basis of the sale**

**2.1** Unless otherwise stated, any quotation given by the Company shall be valid for 30 days.

**2.2** The Company shall sell and/or install and the Buyer shall purchase the Goods in accordance with any written quotation given by the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other items and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

**2.3** No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Company.

**2.4** The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

**2.5** Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Buyer's own risk, and the Company shall not be liable for any such advice or recommendation which is not so confirmed.

**2.6** Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

**2.7** All descriptions, illustrations and particulars issued by the Company in catalogues, price list, advertising matter and specifications are by way of general description and approximate only and shall not form part of any contract or give rise to any liability on the part of the Company.

**2.8** It is the Buyer's responsibility to establish that the Goods ordered are adequate or suitable for the purpose for which they are required and no liability whatsoever is accepted should the Goods not prove adequate or suitable for that purpose.

### **3. Orders and specifications**

**3.1** No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.

**3.2** The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and forgiving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

**3.3** The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company).

**3.4** The Company reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.

**3.5** No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in Writing of the Company and on terms that the Buyer shall fully indemnify the Company against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

### **4. Price of the goods**

**4.1** The price of the Goods shall be the price specified by the Company in its quotation or in the Company's written acceptance of the Buyer's order and shall not be determined by the prices contained in catalogues, advertising material or price lists which are intended only as a guide.

**4.2** The Company shall not be responsible for any losses caused to the Buyer by reason of fluctuation in currency exchange rates between the date when the Goods were ordered and when they are delivered.

**4.3** Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in Writing between the Buyer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.

**4.4** The price quoted by the Company is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Company.

## **5. Terms of payment**

**5.1** Unless otherwise agreed in writing the Company shall be entitled to invoice the Buyer at any time after delivery or deemed delivery (as described in clause 6.5.1) of the Goods.

**5.2** Any invoice queries must be made within 14 days of the date of the invoice.

**5.3** Unless otherwise agreed by the Company in writing, the Buyer shall pay the Company's invoice within 30 days of the date thereof. The Buyer shall pay all amounts due in full without any deduction and shall not be entitled use any counterclaim against the Company in order to justify withholding payment.

**5.4** If the Buyer fails to make any payment when due, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

**5.4.1** Cancel the Contract or suspend any further deliveries to the Buyer whether under the same contract or any other contract between the Buyer and the Company;

**5.4.2** Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and

**5.4.3** charge the Buyer interest (both before and after any judgement) on the amount unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) and the Company's reasonable costs of collecting any overdue payment (including the Company's administrative costs and legal fees).

## **6. Delivery**

**6.1** Unless otherwise agreed in writing delivery of the Goods shall be made by the Company delivering the Goods to the Buyer's premises or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.

**6.2** Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

**6.3** Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated

**6.4** The Company's liability for any failure to deliver the Goods shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

**6.5** If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to it, the Company may:

**6.5.1** Store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

**6.5.2** Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **7. Risk and property**

**7.1** Risk of damage to or loss of the Goods shall pass to the Buyer:

**7.1.1** in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or

**7.1.2** in the case of Goods to be delivered elsewhere at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

**7.2** Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, property in the Goods shall not pass to the Buyer until the Company has received payment in full including all interest and other costs due to it.

**7.3** Until property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

**7.4** Until property in the Goods passes to the Buyer (and provided the goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. The Company shall be entitled where the Goods have been fixed or attached to any other product to detach the goods in order to recover possession of them. Such redelivery or retaking of possession shall be without prejudice to any other rights of the Company.

**7.5** The Buyer shall not be entitled to pledge or in any way charge by way to security for any indebtedness any of the Goods which remain the property of the company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

**7.6** The Company shall be entitled to recover the full price for any Goods sold under these Conditions including VAT, notwithstanding that the title in such Goods has not passed from the Company.

**7.7** If (before property in the Goods passes to the Buyer) the Buyer becomes subject to any of the events listed in clause 10.1 or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly then, provided the Goods have not been sold in the ordinary course of the Buyer's business or irrevocably incorporated into another product, and without prejudice to its other rights or remedies the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, the Company may enter any vehicle or premises where the Goods are stored in order to recover them.

**7.8** The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the Company's property.

**7.9** The Buyer shall insure and keep insured the Goods to their full price against "all risks" to the Company's reasonable satisfaction until title in the Goods passes to the Buyer.

**7.10** Without prejudice to the Company's other rights or remedies, if the Buyer fails to comply with its obligations under this clause 7 all sums whatsoever owing by the Buyer to the Company shall immediately become due and payable.

## **8. Warranties and liability**

**8.1** Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of three months from the date of their initial use or, in the case of new goods, for the period of the manufacturer's warranty whichever is the greater.

**8.2** The above warranty is given by the Company subject to the following conditions:

**8.2.1** The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

**8.2.2** the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;

**8.2.3** The Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

**8.2.4** The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

**8.3** Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**8.4** Where the Goods are sold under a consumer transaction (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions.

**8.5** Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 3 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

**8.6** Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer.

**8.7** Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other

claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

## **9. Force majeure**

**9.1** The Company shall be entitled without liability on its part and without prejudice to its other rights, to terminate the Contract or any unfulfilled part thereof, or at its option to suspend or make partial deliveries or extend the time or times for delivery, if the manufacture of the Goods by the Company or the Company's suppliers, or the delivery of the Goods or the performance by the Company of any of its obligations under the Contract is hindered or delayed whether directly or indirectly by reason of the Purchaser failing to furnish necessary instructions or information, or by war or other hostilities, civil commotion, act of God, government action or legislation, interruption of transport, strike, lock out or other form of industrial action, accidents or stoppages to works, shortage of labour materials equipment fuel or power, breakdown of machinery or any their cause whatsoever beyond the reasonable control of the Company or its sub-contractors, whether or not such cause exists at the date of the order.

**9.2** In such circumstances the Company shall be entitled at its option, and without liability on its part and without prejudice to its other rights or remedies, to:

**9.2.1** terminate the Contract or any unfulfilled part thereof;

**9.2.2** suspend delivery or make partial deliveries; or

**9.2.3** extend the time for delivery.

## **10. Termination**

**10.1** The Company shall be entitled to terminate the supply of Goods hereunder immediately by written notice to the Buyer if:

**10.1.1** the Buyer fails to pay any amount due to the Company on the due date for payment;

**10.1.2** the Buyer commits a material breach of any of these Conditions and, if it is capable of remedy, fails to remedy it within 7 days of the Company's written notice requiring the Buyer to do so; or

**10.1.3** the Buyer has a receiver or administrator appointed, makes any voluntary arrangement with its creditors, is subject to insolvency proceedings in any jurisdiction, goes into liquidation or ceases (or threatens to cease) to carry on business.

**10.2** If any of the events set out in clause 10.1 occurs the Company shall be entitled to cancel the supply of Goods hereunder or suspend any further deliveries without liability to the Buyer and, if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**10.3** On expiry or termination of the Contract the accrued rights, remedies, obligations and liabilities of the parties shall not be affected and clauses which expressly or by implication have effect after expiry or termination shall continue in full force and effect.

## **11. General**

**11.1** Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and shall be deemed to have been validly given if served personally on the other party or if sent by first class pre-paid post, facsimile transmission or email to the other party at its registered office or principal place of business or such other address as may have been notified pursuant to this clause 11 to the party giving the notice. If sent by first class pre-paid post the notice shall be deemed to have been received 2 days after the date of posting. If sent by facsimile transmission or email the notice shall be deemed to have been received on the same day if sent during normal working hours or on the next working day where sent outside such hours (in each case provided it is supported by a valid facsimile transmission/server delivery receipt).

**11.2** These Conditions contain the entire agreement between the parties and no variation of these Conditions shall be binding unless made in writing and signed by both parties.

**11.3** The Buyer shall not assign the benefit of the Contract except with the Company's prior written consent.

**11.4** These Conditions shall not be enforceable by a person who is not a party to them under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

**11.5** No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any provision.

**11.6** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

**11.7** The Contract shall be governed by the laws of England.

## **Terms & Conditions of Hire**

These terms and conditions of hire, including any special terms and conditions agreed in writing by the parties ("Conditions") shall apply to all Contracts (as defined below) for the hire of Goods (as defined below) by JB SURVEY LIMITED registration number 02340409 whose registered office is at Unit 4 Champion House, Wella Road, Basingstoke, RG22 4AG ("Company") to the Buyer (as defined below).

### **1. Interpretation**

**1.1** In these conditions the following words have the following meanings: "CHARGES" means our current hire charges from time to time including any charges for the Services during the Hire Period and/or any charges for the sale of the Products or supply of Services (as appropriate); "CONTRACT" means a contract created by the acceptance of the Order and which incorporates these conditions and any special conditions detailed in the Order made between you and us for the hire of the Equipment, the provision of the Services and/or the sale of Products; "DEPOSIT" means any advance payment required by us in relation to cash hires for the Equipment which is to be held as security by us; "EQUIPMENT" means the equipment detailed in the Order together as a whole and any accessories hired by you as specified in a Contract; "FORCE MAJEURE" means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events; "HIRE PERIOD" means the period commencing when you hold the Equipment on hire (including Saturdays, Sundays and Bank Holidays) and ending upon the happening of any of the following events (i) you return the Equipment to our possession; or (ii) we repossess or collect the Equipment; "LIABILITY" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs (including but without limitation all legal costs and disbursements) and any other losses and/or liabilities; "ORDER" means the purchase order containing the details of the Contract; "PRODUCTS" means the products sold by us to you; "SERVICES" means the services and/or work (if any) to be performed by us for you whether in conjunction with the hire of Equipment (including any delivery and/or collection service for the Equipment) or otherwise; "WE/US/OUR" means JB Survey Limited company detailed in the Order and will include its employees, servants, agents and/or duly authorised representatives; "YOU" means the person, firm, company or other organisation hiring the Equipment and/or purchasing the Products.

### **2. Basis of contract**

**2.1** The conditions do not affect any of your statutory rights where you are a person dealing as consumer, not for business purposes. Any section which would otherwise exclude or restrict your rights as a consumer will, to that extent have no force or effect. PLEASE ALSO SEE SECTION 14.

**2.2** These Conditions shall be incorporated in all Contracts and shall be the sole conditions under which the hire of Equipment, provision of the Services and sale of the Products takes place. All other terms, conditions and other representations are excluded from the Contracts between You and Us including any terms and conditions which You may purport to apply under any Contract and these terms and conditions shall prevail.

**2.3** Our employees or agents are not authorised to make any representations concerning the Equipment and/or Products unless confirmed in writing and any advice or recommendation given by Us to You as to the storage, application or use of the Equipment and/or Products which is not confirmed in writing is followed or acted upon entirely at your own risk.



**2.4** We reserve the right to provide Equipment and/or Products similar or comparable to that ordered by You.

**2.5** The Contract shall become binding when we have acknowledged the order to you either verbally or in writing as appropriate. These conditions shall be applicable to all repeat orders made by you unless we notify you otherwise.

**2.6** The Equipment is hired subject to it being available for hire at the time you request it. We will not be liable for any loss suffered by you as a result of the Equipment being unavailable for hire.

**2.7** You shall obtain and comply with all permissions, consents and licences required for the Equipment under any statute, regulation or by-law.

### **3. Payment**

**3.1** The amount of any Deposit and Charges are detailed in the Order and are based on our current price list from time to time.

**3.2** Where a Deposit is required for the Equipment it must be paid before you hire the Equipment.

**3.3** You shall pay the Charges from the date specified in the Order and will continue paying the Charges during the Hire Period until;

**3.3.1** we have given you a collection or off-hire number; and

**3.3.2** you have returned the Equipment to us or we have collected the Equipment within a reasonable period after the issue of the off-hire number, being not more than 3 working days, and the Equipment is in a clean and serviceable condition and we have given you a receipt.

**3.4** All time during the Hire Period is chargeable and the Charges may be payable on Saturdays, Sundays and Bank Holidays (as appropriate).

**3.5** If we are unable to collect the Equipment for any reason whatsoever after an off-hire number has been issued, we will provide an amendment form to be signed by you to extend the Contract and the Charges shall continue to be payable in accordance with the Contract. Any signature provided by your employees, agents, or representatives shall be deemed to be an authorised signature for and on your behalf for the purpose of the Contract.

**3.6** Where a credit account has not been granted, payment of the Charges shall be made with your order for the Equipment or purchase of the Products. Otherwise, payment of any Charges or any other sums due under this Contract shall be made in full and cleared funds by the end of the following month from the month in the date of the invoice.

**3.7** All Charges are, unless otherwise stated, exclusive of any applicable VAT.

**3.8** Prompt payment under a Contract shall be of the essence. Payment shall not be deemed to be made until we have received cleared funds in respect of the full amount outstanding.

**3.9** Without prejudice to any of our other rights, if you fail to make any payment in full on the due date we may charge you interest (both before and after judgment) on the amount unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 and/or to suspend further Services to you or any of your Associated Companies.

**3.10** You shall pay all sums due to us under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

**3.11** We may set a reasonable credit limit for you. We reserve the right to terminate or suspend the Contract for hire of the Equipment and/or the provision of Services if allowing it to continue would result in you exceeding your credit limit or you have already exceeded the credit limit.

#### **4. Risk, ownership and insurance**

**4.1** Risk in the Equipment and/or Products will pass to you immediately when the Equipment leaves our physical possession or control.

**4.2** Risk in the Equipment will not pass back to us from you until the Equipment is returned to our physical possession.

**4.3** Ownership of the Equipment remains with us at all times. You have no right, title or interest in the Equipment except that it is hired to you.

**4.4** Ownership of any Products remains with us until all monies payable by you (or any of your Associated Companies) under the Contract or any other contract between us and you (or any of your Associated Companies) have been paid in full and cleared funds.

**4.5** You must not deal with the ownership or any interest in the Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending.

#### **5. Delivery, collection and services**

**5.1** You shall collect the Equipment from us and return it to us at the end of the Hire Period. If we agree to deliver or collect the Equipment to and/or from you, we will charge our standard delivery cost.

**5.2** Where we provide the Services relating to the hire of Equipment the persons performing the Services are your responsibility. You shall be solely responsible for any damage which occurs as a result of such persons following your instructions during the Hire Period, except to the extent that the persons performing the Services are negligent.

**5.3** You will allow and/or procure sufficient access to and from the relevant site and procure sufficient loading space, facilities, equipment and access to power supplies and utilities for our employees, sub-contractors and/or agents to allow them to carry out the Services. You will ensure that the site where the Services are to be performed is cleared and prepared before the Services are due to commence.

**5.4** You shall provide suitable access route for delivery and collection of the Equipment with unrestricted entry and approach and supply and lay timbers or appropriate temporary foundations in a suitable position for loading and unloading and for the Equipment to rest on where appropriate.

**5.5** You shall pay for any lifting or special apparatus required for the siting of the Equipment.

**5.6** If any Services are delayed, postponed and/or cancelled due to your failure to comply with your obligations under the Contract, you will be liable to pay additional standard charges for such delay, postponement and/or cancellation except where the delay is due to Force Majeure.

#### **6. Care of equipment**

**6.1** You shall:

**6.1.1** not deface or remove any labels from and/or interfere with the Equipment, their working mechanisms or any other parts of them;

**6.1.2** take reasonable care of the Equipment and keep them properly maintained and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided to or supplied to you and any applicable law or regulations (including any Institution of Electrical Engineers (IEE regulations));

**6.1.3** notify us immediately and in any event within 24 hours after any breakdown, loss and/or damage to the Equipment or of any accident resulting in death, personal injury or damage to property;

**6.1.4** take adequate and proper measures to protect the Equipment from theft, damage and/or other risks;

**6.1.5** notify us of any change of your address and upon our request provide details of the location of the Equipment;

**6.1.6** permit us at all reasonable times to inspect the Equipment including procuring access to any property where the Equipment is situated;

**6.1.7** keep the Equipment at all times in your possession and control and not to remove the Equipment from the United Kingdom without our prior written consent;

**6.1.8** be responsible for the conduct and cost of any testing, examinations and/or checks in to the Equipment required by any legislation, best practice and/or operating instructions, except to the extent that we have agreed to provide them as part of any Services;

**6.1.9** not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Equipment;

**6.1.10** not continue to use Equipment where it has been damaged;

**6.1.11** where the Equipment requires fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Equipment is properly installed by a qualified and competent person.

**6.2** You must return the Equipment in good working order and condition (fair wear and tear excepted) in a clean condition together with all licences, registration and other documents relating to the Equipment.

**6.3** It is your responsibility to check the calibration of the Equipment on each occasion before use. Final determination of the suitability of the Equipment for your specific use is your responsibility and you must assume all risk and liability in this regard.

## **7. Breakdown**

**7.1** Allowance will be made in relation to the Charges for any non-use of the Equipment due to breakdown caused by the development of an inherent fault and/or fair wear and tear provided that you inform us as soon as practicable of the breakdown.

**7.2** You shall be responsible for all expenses, loss (including loss of Charges) and/or damage suffered by us arising from any breakdown of the Equipment due to your negligence, misdirection and/or misuse of the Equipment.

**7.3** We will, at our own cost, carry out all routine maintenance and repairs to the Equipment during the Hire Period (but you agree that you are responsible for applying all lubricating oils and other maintenance detailed in the operating instructions) and all repairs which are required due to fair wear and tear and/or an inherent fault in the Equipment.

**7.4** You will be responsible for the cost of all repairs necessary to Equipment during the Hire Period which arise otherwise than under Section 7.3 above.

**7.5** It is your responsibility to return Equipment to us, or arrange for us to collect Equipment, for re-testing before the date of expiry stated on any certification supplied at the time the Hire Period commenced.

**7.6** You must not repair or attempt to repair the Equipment without our prior written consent.

**7.7** If specifically agreed in advance between us, we will provide an out of hours emergency service to you in respect of breakdowns under this clause 7.

## **8. Loss or damage to the hired goods**

**8.1** If the Equipment is returned in damaged, unclean and/or defective state (except where due to fair wear and tear and/ or an inherent fault in the Equipment) you shall be liable to pay us for the cost of any repair and/or cleaning required to return the Equipment to a condition fit for re-hire.

**8.2** You will pay to us the replacement cost of any Equipment (on a new for old basis) which is lost, stolen and/or damaged beyond economic repair during the Hire Period.

**8.3** You will pay to us our costs which we may incur in tracking or recovering any lost or stolen Equipment.

**8.4** You shall pay the Charges for the Equipment up to and including the date you notify us that the Equipment has been lost, stolen and/or damaged beyond economic repair. From that date until we have replaced such Equipment (or retrieved any lost or stolen Equipment), you shall pay, as a genuine pre-estimate of lost Charges profit, a sum as liquidated damages being equal to two thirds of the Charges that would have applied for such Equipment for that period. We shall use our reasonable commercial endeavours to purchase replacements for such Equipment as quickly as possible using the monies paid under Section 8.2.

**8.5** You agree that where you are in breach of Section 6.1.5 or Section 6.1.7, we shall be entitled to treat the Equipment as lost and the provisions of this Section 8 shall apply.

## **9. Termination by notice**

**9.1** If the Hire Period has a fixed duration, subject to the provisions of Section 10 neither party shall be entitled to terminate the Contract before the expiry of that fixed period unless by agreement.

**9.2** If the Hire Period does not have a fixed duration either party may terminate the Contract upon giving to the other party any agreed period of notice.

## **10. Termination**

**10.1** If you:

**10.1.1** fail to make any payment to us when due; or

**10.1.2** breach the terms of the Contract and, where the breach is capable of remedy, have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

**10.1.3** persistently breach the terms of the Contract;

**10.1.4** provide incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

**10.1.5** attempt to pledge, charge or create any form of security over any Equipment;

**10.1.6** cease or threaten to cease to carry on business;

**10.1.7** being an individual or partnership, have a bankruptcy petition presented against you or compound with or come to an arrangement with your creditors, enter into an individual voluntary arrangement or suffer any similar action in any jurisdiction;

**10.1.8** being a company, enter into voluntary or compulsory liquidation, have an administrator or administrative receiver appointed over all or any of your assets, or compound with or come to an arrangement with your creditors or enter into a company voluntary arrangement, any attachment order is made against you, any distress, execution or other legal process is levied on any of your property or you suffer any similar action in any jurisdiction;

**10.1.9** have circumstances in which we reasonably believe that any of the events mentioned in Sections 10.1.7 or 10.1.8 above is about to occur and we notify you of this belief;

**10.1.10** appear to us, due to your credit rating to be financially inadequate, to meet your obligations under the Contract;

**10.1.11** appear to us to be about to suffer any of the above events; then we shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in Section 10.2 below.

**10.2** If any of the events set out in Section 10.1 above occurs in relation to you then:

**10.2.1** we may enter, without prior notice, any of your premises (or premises of third parties with their consent) where the Equipment and/or Products may be and repossess any Equipment and/or Products;

**10.2.2** we may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract between you (or any of your Associated Companies) and us ;

**10.2.3** we may immediately cancel, terminate and/or suspend without Liability to you the Contract and/or any other contract between you (or any of your Associated Companies) and us;

**10.2.4** any credit period in relation to payment of the Charges shall be accelerated and all sums, all monies owed by you (or any of your Associated Companies) to us under this Contract or any other Contract between you (or any of your Associated Companies) and us shall immediately become due and payable.

**10.3** Any repossession of the Equipment and/or Products shall not affect our right to recover from you (or any of your Associated Companies) any monies due under the Contract or any other contract between you (or any of your Associated Companies) and us and/or any damages in respect of any breach which occurred prior to repossession of the Equipment and/or Products.

**10.4** Upon termination of the Contract you shall immediately:

**10.4.1** at your expense, return the Equipment to us or make the Equipment available for us to collect; and

**10.4.2** pay to us, in full and cleared funds, all outstanding Charges and/or any other sums payable under the Contract or any other contract between us and you (or any of your Associated Companies).

## **11. Limitation of liability**

**11.1** All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.

**11.2** If we are found to be liable in respect of any loss or damage to your property the extent of our Liability will be limited to the retail cost of replacement of the damaged property.

**11.3** Any defective Equipment and/or Products must be returned to us at your expense for inspection before we have any Liability for defective Equipment and/or Products.

**11.4** We shall have no Liability to you if any Charges or monies due in respect of the Equipment, the Services and/or the Products have not been paid in full and cleared funds by the due date for payment.

**11.5** We shall have no Liability resulting from or contributed to by your continued use of defective Equipment and/or Products after a defect has become apparent or suspected or should reasonably have become apparent to you.

**11.6** We shall have no Liability to you to the extent that you are covered by any policy of insurance and you shall ensure that your insurers waive any and all rights of subrogation they may have against us.

**11.7** We shall have no Liability to you for any:

**11.7.1** losses whether arising from breach of contract, tort (including but not limited to negligence), or otherwise, and whether flowing naturally and directly from such breach, negligence or other cause, or not, for loss of revenue, loss of profit, loss of anticipated saving, loss of goodwill or loss of reputation;

**11.7.2** economic and/or other similar losses;

**11.7.3** special damages, indirect losses and/or consequential losses; and/or

**11.7.4** business interruption, loss of business, contracts and/or opportunity.

**11.8** Our total Liability to you under and/or arising in relation to any Contract shall not exceed 5 times the amount of the Charges or the sum of £1,000, whichever is the higher, under that Contract. To the extent that any of our Liability to you would be met by our insurance then our Liability shall be extended to the extent that such Liability is met by such insurance.

**11.9** Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

**11.9.1** Liability for breach of contract;

**11.9.2** Liability in tort (including negligence); and

**11.9.3** Liability for breach of statutory and/or common law duty; except Section 11.8 above which shall apply only once in respect of all the types of Liability under this Section 11.9.

**11.10** Nothing in this Contract shall exclude or limit our Liability for death or personal injury due to our negligence nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

## **12. General**

**12.1** Upon termination of the Contract the provisions of Sections 3.3, 3.8, 3.9, 8.1, 8.2, 8.3 and Section 6 shall continue in full force and effect.

**12.2** The hiring of each piece of Equipment in the relevant Hire Period shall form a distinct Contract which shall be separate to any other Contract relating to other Equipment.

**12.3** You shall be liable for the acts and/or omissions of your employees, agents, servants and/or subcontractors as though they were your own acts and/or omissions under this Contract.

**12.4** You shall be responsible for compliance with all relevant legislation and regulations issued by Government or local authorities, including (but not limited to) regulations under the Factories Acts, Health and Safety at Work Act.

**12.5** You agree to indemnify and keep indemnified us against any Liability suffered by us and arising from or due to your breach of contract, tort (including negligence) and/or any breach of statutory duty and/or any claim from a third party for injury to person or property arising from your use or storage of the Equipment.

**12.6** No waiver by us of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

**12.7** If any provision of the Contract is held by any competent authority to be unenforceable, in whole or in part, the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

**12.8** We shall have no Liability to you for any delay and/or non-performance of a Contract to the extent that such delay is due to Force Majeure. If we are affected by Force Majeure then time for performance of our obligations under the Contract shall be extended for a period equal to the period of the delayed performance.

**12.9** These terms and conditions supersede and replace all prior terms and conditions, communications, representations, warranties, stipulations, undertakings, and agreements whether oral or written between the parties.

**12.10** All third party rights are excluded and no third parties shall have any rights to enforce the Contract.

**12.11** This Contract is governed by and interpreted in accordance with the Laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the British courts in relation to any matter or dispute arising out of or in connection with it (whether of a contractual or tortious nature or otherwise).

**12.12** We have the right to vary the Contract, by giving you 7 days written notice of such variation.

**12.13** You shall not, and shall procure that your directors, employees, agents, representatives, contractors or subcontractors shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010. You shall have in place adequate procedures designed to prevent any person working for or engaged by you or any other third party in any way connected to the Contract, from committing offences of corruption or bribery. Breach of this Section 12.13 shall entitle us to terminate with immediate effect.

### **13. Consumer credit act**

**13.1** Hires to individuals or partnerships of 3 individuals or less (or other unincorporated body of individuals) shall not be for a period in excess of 3 months. You shall return the Equipment to us on or before the last day of such three month period.

**13.2** If you are an individual or a partnership of 3 individuals or less (or other unincorporated body of individuals) and we (in exceptional circumstances) agree to a contract in excess of 3 months then the Contract will be subject to The Consumer Credit Act 1974. Sections 13.3, 13.4 and 13.5 will only apply in the circumstances listed in this section 13.2.

**13.3** The Consumer Credit Act 1974 lays down certain requirements for your protection which should have been complied with when this agreement was made. If they were not, we cannot enforce this agreement against you without getting a court order.

**13.4** For further information about your statutory rights under the Consumer Credit Act 1974 and other legislation, contact your local authority Trading Standards Department or Citizens Advice Bureau.

**13.5** Missing payments could have severe consequences and may make obtaining credit more difficult.

#### **14. Terms applying to consumers only**

**14.1** Where you are acting as a consumer under the Unfair Contract Terms Act 1977 (you enter into the Contract not in the course of business), the following provisions in the Contract may, subject to determination by the Courts, have no force or effect:

**14.1.1** Section 2.3 (employees' representatives);

**14.1.2** Section 3.8 (payment of interest on late payment);

**14.1.3** Section 3.9 (no right of set-off);

**14.1.4** Section 5.6 (payment for delayed performance as a result of your non-compliance with the Contract);

**14.1.5** Section 6.3 (suitability of Equipment);

**14.1.6** Section 10.2.1 (right of entry and seizure of Equipment). This Section will also apply to consumers under the Consumer Credit Act 1974;

**14.1.7** Section 11 (Limitations of Liability) subject to Section 11.10 continuing to apply;

**14.1.8** Section 12.5 (indemnity); and

**14.1.9** Section 12.11 (jurisdiction).

**14.2** Should any defect occur in the Equipment and/or Products, other than one for which you were responsible, we will at our option either, replace or repair the Equipment and/or Products (at no charge to you) as soon as is reasonably practicable. We shall not replace, repair or service any Equipment and/or Products until any outstanding Charges have been paid in full and cleared funds.



## **Terms & Conditions of Service and Repair**

These terms and conditions of service and repair, including any special terms and conditions agreed in writing by the parties ("Conditions") shall apply to all Work (as defined below) carried out by JB SURVEY LIMITED registration number 02340409 whose registered office is at Unit 4 Champion House, Wella Road, Basingstoke, RG22 4AG ("Company") for any company, firm or individual ("Customer").

- 1.** In these Conditions "GOODS" means any goods on which the Company is requested to carry out Work. "PARTS" means parts or other items used by the Company in the course of the Work or which are sold separately to the Customer. "WORK" means any repairs, servicing, calibration, fitting or other work carried out on the Goods.
- 2.** These Conditions apply where the Company carries out Work for, or sells Parts separately to, the Customer and shall supersede all other terms and conditions.
- 3.** All Work carried out by the Company shall be at its current list price for that work. The Company may, if requested, provide an estimate of its charges before commencing the Work. The estimate is no more than a guide to the anticipated final charge and does not constitute an offer or in any way bind the Company.
- 4.** The Work shall be carried out at the Company's premises, unless otherwise determined by the Company. The Customer shall be responsible for delivering Goods to the Company.
- 5.** The Company in its discretion may arrange for collection of the Goods from the Customer and redelivery to the Customer after the Work has been carried out and the Customer shall be liable for the Company's cost of doing so. Liability for any loss or damage occurring during carriage arranged by the Company shall be limited to the extent of carrier's liability and insurance.
- 6.** The Work shall be deemed complete when the Customer is notified by the Company that the Goods are ready for collection or, if the Company has agreed to do so, when it has redelivered the Goods to the Customer.
- 7.** The Company, in its sole discretion, may employ subcontractors to carry out the Work.
- 8.** The Company shall use reasonable endeavours to carry out the Work in a timely manner and within the time period notified to the Customer but time shall not be of the essence of the contract and the Company shall not be liable for any failure to complete the Work within the time period notified.
- 9.** The Company shall in its complete discretion be entitled to replace any faulty or worn parts with new or reconditioned parts if it is deemed necessary to do so. Unless otherwise agreed, any faulty or worn parts which are so removed and replaced shall become the property of the Company and the Customer relinquishes all title to such faulty or worn parts.
- 10.** Subject to clause 12, the Company warrants that any Work will be free from defects in materials and workmanship for a period of 3 months after its completion or, in the case of Parts used in the Work, for the period of the manufacturer's warranty for those Parts (whichever is greater).
- 11.** The Company warrants that any Parts sold separately will be free from defects for a period of 3 months after the sale or for the period of the manufacturer's warranty for those Parts (whichever is greater).
- 12.** Where the Work includes calibration of any instrument, and owing to the sensitivity of instruments and the range of uses to which they may be put after calibration, the Company does not warrant the calibration beyond the date of certification.

- 13.** Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.
- 14.** The Company may render an invoice when the Work is completed or the Parts have been supplied and the Customer shall pay the invoice forthwith. If the Customer fails to make any payment when due the Company may charge the Customer interest (both before and after any judgement) on the amount unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) and the Company's reasonable costs of collecting any overdue payment (including the Company's administration costs and legal fees). If payment has not been made and the items not collected after 6 months, The Company reserves the right to sell the goods in order to recover costs incurred for the services provided. This will be after all attempts to contact The Customer have failed.
- 15.** Nothing in these Conditions shall limit or exclude the Company's liability for death or personal injury caused by the negligence of the Company or its employees, servants, agents or subcontractors or for fraud or fraudulent misrepresentation.
- 16.** Subject to clause 15, the Company shall not be liable to the Customer, whether in contract, tort (including negligence) or otherwise, for any loss of profit, goodwill, business, business opportunity or anticipated saving or for any special, indirect or consequential damage or loss and the Company's total liability arising under or in connection with the contract, shall be limited to the amount of the charges payable by the Customer for the Work and Parts.
- 17.** The Company shall not be responsible for any delay or any failure to perform its obligations under these Conditions due to any cause beyond its reasonable control.
- 18.** These Conditions contain the entire agreement between the parties and no variation of these Conditions shall be binding unless made in writing and signed by both parties.
- 19.** The Customer shall not assign the benefit of any contract governed by these Conditions except with the Company's prior written consent.
- 20.** These Conditions shall not be enforceable by a person who is not a party to them under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 21.** No waiver by the Company of any breach of the Contract by the Company shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 22.** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 23.** These Conditions shall be governed by the laws of England and the English Courts shall have exclusive jurisdiction to decide any dispute concerning them (including any dispute as to the formation of any contract).