

# **COLLEASE TRUCK and TRAILER RENTALS LTD**

## **Conditions of Hire**

### **1. Interpretation**

- 1.1 “Agreement” means either:
- a) the Hire Schedule (“the Schedule”) and the sheet with a schematic drawing of the Vehicle (“the Check Sheet”) for the Vehicle which each bear the same Fleet No. or
  - b) the digital record of condition of the Vehicle together with the rates and particulars of hire (“the DRC”)
- together with these conditions of hire (“Conditions of Hire”), and any variations to either of the above made in accordance with Condition 9.1.
- “Company” means Collease Truck and Trailer Rentals Limited and “Company’s Agent” means any employee, servant, agent, licensee, director, officer or other person acting with the express authority of the Company.
- “Customer” means the individual, company or firm details of which are given in the Schedule, and if a trading name is used shall include all persons (whether natural persons or corporations) trading under that name, and “Customer’s Agent” means any employee, servant, agent, licensee, director, officer or other person acting with the express, implied or ostensible authority of the Customer.
- “Distance Charge” means the charge per kilometre for distance covered in excess of the distance shown on the Schedule.
- “Fair Wear and Tear” means wear and tear in accordance with the requirements set in the industry BVRLA fair wear and tear guidelines.
- “Group Member” means the Company or a company which is at the relevant time a holding company of the Company or a subsidiary of such holding company and “Group” shall be construed accordingly.
- “Hire” means the hire of the Vehicle to the Customer under the terms of this Agreement and includes any continuation of the hire after the end of the Minimum Hire Period however arising.
- “Hire Fee” means the sum shown on the Schedule as the Hire Fee (and on which VAT is payable) and which is payable at the times and in the manner set out in Condition 2.10 and is chargeable for and including the day upon which the Vehicle is returned to the Return Depot and if this is not a Working Day is chargeable until the Working Day next following the day the Vehicle is returned.
- “Interest” means interest calculated on a daily basis and compounded monthly at the rate of 4% per annum above the base rate of National Westminster Bank Plc from time to time in force.
- “Minimum Hire Period” means the fixed period of hire of the Vehicle shown on the Schedule and if none is shown means one week.
- “Payment” means any sum which the Customer is liable to pay under this Agreement and whether or not the payment is to the Company

or to a third party and includes (but is not limited to) any Hire Fee, Distance Charge, Interest, Penalty, insurance premium, licence fee, registration fee, assessment, tax, cost of servicing maintaining or repairing the Vehicle, insurance monies paid to the Customer for damage to the Vehicle, any excess on such insurance monies and any VAT on any of them and "Payments" shall be construed accordingly.

"Penalty" means any penalty, fine, tax, charge, toll, fee, duty or other similar costs (including those of a novel nature which come into force after the date of this Agreement) incurred by or imposed on the Vehicle (other than those which the Company expressly undertakes to pay) during the currency of this Agreement.

"Return Date" means the last Working Day of the Minimum Hire Period and "Substituted Return Date" means the last Working Day of any extension of the Hire or, if the context requires, the date the Vehicle is in fact returned following any Deemed Hire.

"Return Depot" means the Company's Depot identified on the Hire Schedule or any other place to which the Company has expressly agreed the Vehicle may be returned upon the ending of the Hire.

"Similar Agreements" means one or more agreements for the hire of vehicles or equipment by the Customer from the Company or any Group Member whether or not the terms of such agreement are the same or similar to this Agreement.

"Vehicle" means the vehicle and/or equipment described in the Schedule and on the Check Sheet together with all ancillary equipment (including but not limited to keys) and documentation including (but not limited to) TIR and MOT Certificate supplied with the vehicle and in the absence of any provision to the contrary includes any part or parts thereof.

"Working Day" means any time between 0800 hours and 1630 hours on a Monday to Friday (both days inclusive) which is not a Bank Holiday in England or Christmas Eve or New Years Eve and 0800 hours to 1130 hours on a Saturday which is not Christmas Eve, Christmas Day, Boxing Day, New Year's Eve or New Year's Day.

1.2 A reference to one gender includes all genders and a reference to the singular includes a reference to the plural and vice versa and a reference to words denoting natural persons includes a reference to corporations, firms, partnerships, associations and like organisations and whether or not having a separate legal personality and vice versa.

1.3 Any obligation in this Agreement by a party that consists of two or more persons shall be undertaken as a joint and several obligation by that party.

1.4 The headings of this Agreement are for locating text and are not to be taken into account in interpretation.

1.5 An obligation by a party not to do any act or thing includes an obligation not to allow that act or thing to be done by another person.

- 1.6 It is intended that any Group Member should be able to enforce any of the terms of this Agreement against the Customer but otherwise this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.
- 1.7 Reference to a Condition or paragraph or sub Condition or sub paragraph by number is a reference to the Condition, paragraph or sub Condition or sub paragraph of this Agreement so numbered.
- 1.8 In this Agreement a reference to the Hire Schedule or the Check Sheet shall where the context requires be taken to include a reference to the DRC.

## **2. Agreement to Hire**

- 2.1 The Customer shall acquire no rights under this Agreement until:
- (a) this Agreement has been signed by the Company, and
  - (b) any guarantee or collateral security required by the Company has been completed and delivered to the Company, and
  - (c) the Company has received as a cleared fund any payment prescribed by law or which the Company has required the Customer to pay before the Customer obtains rights under this Agreement

PROVIDED THAT if these conditions have not been met the Customer shall still incur all of its obligations and liabilities under this Agreement if the Vehicle has been released to the Customer or the Customer's Agent and even though the Customer subsequently ceases to have physical custody or control of the Vehicle.

- 2.2 The Company hires the Vehicle to the Customer and the Customer takes the Vehicle on the terms and conditions of this Agreement.
- 2.3 In consideration of the hire of the Vehicle to the Customer, the Customer undertakes to perform and observe all of the terms and conditions of this Agreement intended to be observed or performed by the Customer.
- 2.4 Subject to Condition 6.2 the hire of the Vehicle shall be for the Minimum Period of Hire and thereafter shall be continued as provided in Condition 2.5.
- 2.5.1 Subject to Condition 2.5.2, if the Vehicle is not returned to the Return Depot on the Return Date the Hire shall continue (with the first day of the continued Hire being the day immediately following the Return Date) until the Hire is determined either by:-
- (i) the Company pursuant to Condition 6.2, or
  - (ii) one party giving to the other party written notice terminating the Hire, with the notice being the shorter of either
    - (a) a period equivalent to the Minimum Hire Period, or
    - (b) one calendar monthand the Customer returning the Vehicle to the Return Depot on the expiry of the notice.

During the continuation of the Hire all of the terms and conditions of this Agreement (other than the Minimum Hire Period) shall apply (with such changes as necessary to give them effect).

2.5.2.1 The Hire shall be deemed to continue even though the Customer for any reason, (including, but not limited to, impounding, retention, theft, loss, strike, lock-out, inclement weather or criminal act) is unable (or refuses) to return the Vehicle to the Return Depot on the Return Date or the Substituted Return Date in the Delivery Condition ("Deemed Hire").

2.5.2.2. The Deemed Hire shall continue until either:

- (a) the Vehicle is returned to the Return Depot on a Working Day in the Delivery Condition, or
- (b) the Company is paid the full retail value of the Vehicle together with all Payments then due to the Company.

Throughout the period of Deemed Hire all of the Customer's obligations under this Agreement shall remain in full force and effect although the Customer may not have physical control of the Vehicle and the Company may have taken action (including legal proceedings) to recover any Payments due to it and/or for the return of the Vehicle from the Customer or any third party.

2.6 By signing this Agreement and taking delivery of the Vehicle from the Company the Customer:-

2.6.1 accepts that the Vehicle is to the Customer's entire satisfaction and free from any fault or defect other than those (if any) shown on the Schedule or the Check Sheet ("Delivery Condition") and

2.6.2 undertakes to return the Vehicle (whenever and however returned) to the Company in the Delivery Condition other than for mileage and Fair Wear and Tear.

2.6.3 warrants to the Company that the person signing this Agreement and taking delivery of the Vehicle is fully authorised by the Customer to enter this Agreement on behalf of the Customer and to bind the Customer to the terms and conditions contained in this Agreement (including this warranty) and is authorised and competent to take delivery of the Vehicle, and

2.6.4 undertakes to ratify this Agreement or any matter arising from it.

2.7 This Agreement contains the whole agreement and understanding of the parties in respect of the Hire and the Vehicle and supersedes any previous agreement between the parties relating to the subject matter of this Agreement. The Customer confirms it has not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. In the event of a conflict between the Conditions of Hire and any other document comprising this Agreement the Conditions of Hire shall prevail.

2.8.1 The Customer confirms and warrants the truth of all information provided by the Customer or the Customer's Agents in any credit application or similar document to any Group Member completed by or on behalf of the Customer prior to this Agreement coming into effect.

2.8.2 Without limiting the generality of the foregoing the Customer shall have no remedy in respect of any statement made to the Customer or the Customer's Agents and upon which the Customer may have relied in entering this Agreement and the Customer's only remedy is for breach of contract. Nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

2.8.3 Insofar as the law permits all warranties implied by statute, common law or otherwise are excluded from this Agreement and the Hire and the only warranties that apply are those which are expressly set out in these Conditions of Hire.

- 2.9 If the Company accepts the Vehicle either upon it being returned by the Customer or it being repossessed by the Company such acceptance of the Vehicle by the Company shall be without prejudice to any rights the Company may have in respect of any antecedent breach of this Agreement by the Customer including, but not limited to, the failure of the Customer to maintain the Vehicle and to return it in the Delivery Condition.
- 2.10.1. Any Payment due to the Company from the Customer shall (unless otherwise agreed in writing with the Company) be payable on the date in each month shown on the Schedule or, if no date is shown, by the 20<sup>th</sup> of the month immediately following the date of the invoice requesting payment.
- 2.10.2. If a Payment due to the Company from the Customer is not paid within the periods referred to in Condition 2.10.1.the Company may, provided it has previously sent the Customer an invoice requesting payment, commence proceedings for recovery of the unpaid amount of the invoice without further notice being given to the Customer.
- 2.11 All Payments shall be paid in such manner as the Company may from time to time direct including direct debit, credit transfer or BACS.

### **3. Care and Maintenance and Use**

- 3.1 The Customer is responsible for the following maintenance in relation to the Vehicle:-
- 3.1.1 regular and systematic inspections of the Vehicle commensurate with its age and mileage and the use to which it is put..
- 3.1.2 regular and systematic maintenance of both a routine nature, to include (but not limited to) driver daily checking oil and other fluid levels, checking tyre air pressures, visual inspection for faults, and as a result of anything revealed by inspection or use of the Vehicle.
- 3.1.3 ensuring that all necessary fuel additives (including but not limited to adblue) are at a sufficient level and that the Vehicle does not suffer damage of any kind because levels of fuel additives are incorrect.
- 3.2 Unless otherwise agreed in writing, the Company will be responsible for the costs of routine maintenance and work on the Vehicle caused by Fair Wear and Tear and the Customer will be responsible for the costs of any work on the Vehicle required for any reason other than Fair Wear and Tear.
- 3.3 Unless agreed otherwise in writing by the Company any replacement parts (including tyres) for the Vehicle which the Customer has to provide shall be purchased through the Company or from a supplier approved by the Company and shall be new, of the same make and specification as the item being replaced and shall be fitted by an appropriately qualified and/or experienced fitter.
- 3.4.1 Unless otherwise stated in the Schedule the Company will replace any tyre forming part of the Vehicle which needs replacement because of normal wear and tear but the Customer shall be responsible for and fully indemnify the Company against all costs and expenses incurred as a result of punctures to the tyres or damage to tyres resulting from a cause other than normal wear and tear.
- 3.4.2 If the Customer is responsible for the tyres, the Vehicle must be returned with the tyres of the same type and of a recognised premium brand, in the same condition and with the same amount of tread as the tyres fitted to the Vehicle at the commencement of the Hire had at the commencement of the Hire. .
- 3.4.3 If the Customer replaces a tyre it must be a tyre of a type previously approved in writing by the Company.

- 3.5 The Customer must keep the Vehicle in the Customer's actual possession and control and not take the Vehicle outside of Great Britain without the Company's prior written consent.
- 3.6 The Customer shall immediately report to the Company by telephone:
- (a) any mechanical or electrical fault or problem with the Vehicle, or
  - (b) if the Vehicle breaks down, or
  - (c) if the Vehicle is involved in an accident.

And the Customer shall send written details (by first class, pre paid, recorded delivery post or email) on the Working Day immediately following the telephone Report

#### **4. Customer's Obligations**

The Customer shall:

- 4.1
- 4.1.1 pay all Payments as they fall due.
  - 4.1.2. keep within the credit terms agreed with the Company.
  - 4.1.3. pay the Company a fee of £75 (together with VAT thereon) each time a cheque provided by the Customer is presented by the Company but not met.
  - 4.1.4. pay an administration fee for all work carried out by the Company or the Group in pursuing payment of any Payment due to the Company under this Agreement and which has not been paid on the due date.
- 4.2 Insure and keep insured the Vehicle (until the Company or the Company's Agent accept the return of the Vehicle) with insurers approved by the Company for the full replacement value of the Vehicle in the Delivery Condition and comprehensive third party liability cover and in relation to such insurance the Customer shall:-
- 4.2.1 pay all premiums promptly as they fall due.
  - 4.2.2 immediately obtain an endorsement on the policy recording the Company's interest in the Vehicle and providing that all sums under the policy shall be paid to the Company.
  - 4.2.3 whenever requested by the Company promptly provide a copy of the insurance policy together with all schedules, endorsements and addendum thereto and evidence that all premiums due have been paid
  - 4.2.4 not settle or compromise any claim in respect of the Vehicle without first obtaining the Company's written consent and use all the Customer's best endeavours to obtain all monies due under the insurance and to hold such money on trust for the Company and to pay it to the Company on demand
  - 4.2.5 authorise and permit the Company (if it requires) to negotiate with the insurers (or their agents) direct and to this end the Customer irrevocably authorises the Company to receive such money from the insurers and to give them a good discharge for that money on behalf of the Customer
  - 4.2.6 effect such other insurance as the Company reasonably requires under this Agreement.
  - 4.2.7 permit the Company to retain any commission, fee or discount it receives from any party in connection with insurance effected on the Vehicle.
  - 4.2.8 forthwith make good from the Customer's own money any shortfall in the monies paid by the insurers in respect of the loss of or damage to the Vehicle.
- 4.3 Not remove, obliterate or abuse any identification marks on the Vehicle.
- 4.4 Not make any deductions or set off against any Payment due from the Customer to the Company under this Agreement.

- 4.5 Pay all licence fees, registration fees, assessments, charges or taxes which may at any time be imposed on the Customer, possessor or user of the Vehicle (excluding any taxes on or assessed by reference to the profits of the Company).
- 4.6 Fully and effectually indemnify the Company and Group Members from and against all losses, cost or damages (whether direct, indirect or consequential) arising from any failure on the part of the Customer to observe and perform its obligations under this Agreement or because of the neglect or default of the Customer or the Customer's Agents in relation to the Vehicle.
- 4.7 Forthwith on demand reimburse the Company any premium or other payment the Company has made because of the Customer's failure to comply with its obligations under this Agreement.
- 4.8 Pay Interest on all Payments due to the Company and which are not made to the Company on the due date, the Interest to be paid from the date the Payment should have been made to the date it is made (both days inclusive). A Payment shall only be treated as made to the Company on the date it is a cleared fund in the Company's bank account.
- 4.9.1 Unless the law requires otherwise hold and maintain an Operator's Licence which covers the use of the Vehicle, and comply with all conditions relating to that Licence, and promptly provide such information concerning that Licence as the Company shall from time to time request and notify the Company immediately the Customer becomes aware of any change to or breach of the conditions attaching to that Licence.
- 4.9.2 Comply with all legislation relating to the use and operation of the Vehicle including, without limitation, the Customer and any other person driving or using the Vehicle with the express or implied authority of the Customer must have a valid licence to drive or use the Vehicle.
- 4.10 Return the Vehicle with at least the amount of fuel that it had when it was hired to the Customer, and not claim the fuel (or payment in lieu of the fuel) in the Vehicle when the Hire ends, with the intent that all fuel in the Vehicle at the end of the Hire shall belong to the Company
- 4.11 if the Vehicle is not returned to the Company when the Hire is terminated (for whatever reason) or the Company otherwise requires the return of the Vehicle, in addition to any other remedies which the Company has the Customer will pay the Company:-
- 4.11.1 a sum equivalent to the Hire Fee for the period when the Vehicle came off Hire until it was returned to the Return Depot.
- 4.11.2 a fee of £200 (plus VAT) for collection of the Vehicle together with a fee of £2.00 (plus VAT) for each mile covered by the Company's Agents in collecting and returning the Vehicle to the Return Depot.
- 4.11.3 the costs of all fuel used by the Company or the Company's Agents and all tolls, fees, charges and taxes paid by the Company or the Company's Agents (whether for the Vehicle or other vehicles) in collecting and returning the Vehicle to the Return Depot
- 4.12 Maintain (at the Customer's expense) all records, licences and certificates for the Vehicle required by law.

- 4.13 Not without the written consent of the Company modify or alter the Vehicle in any way and (without prejudice to the generality of the foregoing) not to do anything that invalidates the manufacturers warranty for the Vehicle and the Customer will indemnify the Company against any loss it suffers as a result of the breach of this clause.
- 4.14 Not:
- 4.14.1 except in the course of the Customer's ordinary business remove the Vehicle from the address shown in the Schedule, and upon being requested by the Company the Customer shall immediately advise the Company of the whereabouts of the Vehicle. The Customer shall immediately upon demand reimburse the Company all costs it incurs in tracing the whereabouts of the Vehicle because of the failure of the Customer upon request immediately to advise the Company of the whereabouts of the Vehicle.
- 4.14.2 permit any lien, mortgage, charge or other encumbrance to arise over the Vehicle, and the Customer will keep the Vehicle free from distress, execution or other legal process.
- 4.14.3 do anything in relation to the Vehicle which is inconsistent with the Company's unencumbered ownership of the Vehicle.
- 4.15.1 Promptly pay any Penalty and fully indemnify and keep indemnified the Company against the non payment of Penalties together with such costs (including the administrative costs of the Company and the Group as reasonably assessed by the Company) as shall be incurred by the Company and the Group as a result of the failure of the Customer to promptly pay all Penalties.
- 4.15.2 Upon written request immediately supply the Company with any information it requests in connection with Penalties.
- 4.16 Make the Vehicle available to the Company from time to time at such place as the Company shall direct in order to allow the Company to inspect and test the Vehicle, to affix plates or other identifying marks to the Vehicle and to perform its obligations under this Agreement.
- 4.17 Keep within the Customer's credit terms with the Company.
- 4.18 If a vehicle is returned before the end of the Minimum Hire Period for any reason whatsoever, the Customer shall pay 100% of all future rentals due for the Minimum Hire Period where that period is 12 months or less and where that period is more than 12 months, the Customer shall pay 100% of 12 months rentals and 90% of all future rentals due for 13 months and above.

## **5. Loss or Damage to Vehicle**

- 5.1 At the end of the Hire (howsoever ending) if the Vehicle is not in the Delivery Condition or is otherwise in a condition which is inconsistent with the performance by the Customer of its obligations under this Agreement the Customer shall pay to the Company on demand
- 5.1.1 the costs (including sums reasonably attributable to the Company's or Group's administrative and legal costs) of putting the Vehicle into the Delivery Condition (or other condition required by this Agreement); and
- 5.1.2 a sum equivalent to the Hire Fee which would have been payable under this Agreement for the period from the end of the Hire until the Vehicle is put into the Delivery Condition (or other condition required by this Agreement), with the Company acting with reasonable diligence in putting the Vehicle into the Delivery Condition, and



5.1.3 All losses which the Company or the Group suffer as a result of the Vehicle not being in the Delivery Condition (or other condition required by this Agreement) on the Return Date.

5.2 If following the return of the Vehicle to the Company, the Company:

- (a) identifies a matter which needs work on the Vehicle to put it into the Delivery Condition ("Work"), and
- (b) informs the Customer of the need to carry out the Work

the Customer shall provide the Company with an order number for the Work within 5 Working Days of being advised of the fact that the Work is required, and if the Customer does not so provide an order number the Company shall, in addition to any other money due to it, be at liberty to charge a fee equivalent to the Hire Fee for the period from the request of the order number until the day the order number is given (both days inclusive).

5.3.1 If the Vehicle is damaged, destroyed or lost ("Loss") and the Loss, or any part, of it is not covered by insurance effected by the Customer or a third party (other than the Company or a Group Member) the Customer shall be responsible at its own expense for making good the uninsured Loss. If the Customer has to carry out repairs to the Vehicle in order to put it into the Delivery Condition the Customer shall only use repairers and parts approved by the Company in writing in advance of the work being done.

5.3.2 If the Vehicle is a total loss the value of the Vehicle for calculating the Company's loss and for which the Customer shall indemnify the Company shall be the cost of a replacement vehicle in the Delivery Condition and of similar age mileage and specification to the Vehicle.

## **6. Agreements**

It is agreed as follows:-

6.1 That all Payments due to the Company shall be made in pounds sterling unless the Company agrees in writing to accept payment in another currency.

6.2 That the Company may terminate the Hire and repossess the Vehicle without notice on the happening of any of the following events:

6.2.1 the breach by the Customer of any of the provisions of this Agreement, (which shall mean any provision no matter what the legal status of that provision) and whether or not there have been previous breaches of the same or similar provisions which did not result in the Company exercising the power to terminate this Agreement.

6.2.2 the Customer (if an individual and anyone of them if the Customer is more than one person);

6.2.2.1 proposes or enters into an arrangement or composition for the benefit of the Customer's creditors, or is the subject of any distress, execution, sequestration or other process levied upon or enforced against any part of the Customer's undertaking property assets or revenues, or

6.2.2.2 is the subject of a bankruptcy petition or has a bankruptcy order made against him or is the subject of an application order or appointment under the Insolvency Act or is unable to pay or has no reasonable prospect of being able to pay his debts within the meaning of the Insolvency Act.

- 6.2.3 the Customer (if a company) is the subject of a petition presented, an order made, a resolution passed (or analogous proceedings taken for appointing an administrator of the Customer) for winding up the Customer (other than for amalgamation or reconstruction of a solvent company) or stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay the Customer's debts within the meaning of the Insolvency Act 1986 when they fall due.
- 6.2.4.1 For all Agreements entered or renewed on or after 1<sup>st</sup> January 2019 Clause 6.2.4.2 shall apply, but for the avoidance of doubt it shall not apply to any Agreement entered or renewed on or before 31<sup>st</sup> December 2018.
- 6.2.4.2 Where the vehicle is subject to a Head Finance agreement and the owner of the vehicle becomes entitled to require possession of the vehicle / trailer under the terms of the Head Finance Agreement the hiring of that vehicle may be terminated. Alternatively the owner of the vehicles / trailers may, at its absolute discretion continue to hire or assign the Head Finance Agreement of any such vehicles to the customer. In any event any terms relating to replacement vehicles / trailers or maintenance packages would be cancelled with immediate effect & a corresponding adjustment made to the rental if appropriate.
- 6.3 It is the Customer's responsibility to obtain and retain any information or data it requires from the Vehicle's tachograph and upon the Vehicle being returned to the Company the Company shall be under no obligation to retain any information or data in the tachograph.
- 6.4 The failure by the Company to enforce at any time, or for any period, one or more of the terms, provisions or Conditions of this Agreement (including, but not limited to, the provisions of Condition 6.8) shall not be a waiver of them or of the right at any time subsequently to enforce all the terms, provisions and Conditions of this Agreement.
- 6.5 This Agreement is personal to the Customer and it may not be assigned, novated, transferred or charged.
- 6.6 If the Company wishes it may assign the benefit of this Agreement together with its obligations under this Agreement to any Group Member. Upon being advised of any such assignment the Customer shall sign or execute such documents and do such acts or things, at no charge to the Company or the Group member, as the Company may reasonably require in connection with such assignment or transfer.
- 6.7 All amounts due to the Company under this Agreement shall be paid in full without any deduction or withholding and the Customer shall not be entitled to assert any credit, set off or counterclaim against the Company in order to justify withholding payment of any amount due (whether in whole or in part) to the Company under this Agreement.
- 6.8 Unless otherwise stated time shall be of the essence for the purpose of the performance of the Customer's obligations under this Agreement.
- 6.9 The ending of this Agreement (for whatever reason) shall not affect the Customer's liability to the Company for any breach of this Agreement occurring before this Agreement was ended.
- 6.10 If the Company requests the return of the Vehicle and the Customer does not return it to the Company by the Working Day next following such request the Customer hereby:
- (a) irrevocably appoints the Company its agent for the purpose of recovering and returning the Vehicle to the Return Depot at the Customer's expense, and

- (b) irrevocably authorises the Company to enter any property on or in which the Vehicle is situated and over or in which the Customer has any estate, interest or licence, and
- (c) irrevocably authorises the Company to do any act or thing in the name of and with the authority of the Customer that the Company deems necessary for the return the Vehicle to the Return Depot.

6.11 It is agreed that the Company's liability to the Customer under this Agreement shall be limited to providing a replacement Vehicle for any Vehicle which is not reasonably capable of performing the function for which it was designed, such replacement vehicle (dependent upon availability) to be available for collection from the company within 72 hours of the company being informed in writing of the need for the replacement vehicle and in any event the Company shall not be liable for any loss, costs or damages whatsoever suffered or incurred (whether directly or indirectly) by the Customer as the result of the failure of the Vehicle to perform the function for which it was designed or any other function.

Provided that the Company shall not be liable to replace any Vehicle when the reason it is unable to perform a function is attributable in whole or in part to:

- (a) the failure of the Customer to perform its obligations under this Agreement, or
- (b) the act or default of the Customer or the Customer's Agents, or
- (c) the act or default of a third party (other than the Company or a Group Member).

## **7. Consolidation and Set Off**

7.1 If at any time during the currency of this Agreement there are any subsisting Similar Agreements then:

7.1.1 any termination (other than by expiry of time) for whatever reason of any one of the Similar Agreements shall entitle the Company (in its own absolute discretion) to terminate this Agreement forthwith without notice and without incurring any liability to the Customer, or

7.1.2 any termination of this Agreement (other than by expiry of time) of the Hire hereunder by either party to this Agreement shall entitle the Company (in its own absolute discretion) to terminate or otherwise enforce or accelerate the Customer's liability under any or all subsisting Similar Agreements and the hiring thereunder without notice and without incurring any liability to the Customer.

If either of the above events occur there shall be forthwith due to the Company the aggregate of the sums which become payable to the Company by the Customer upon the happening of such events under the provisions of this Agreement and the Similar Agreements.

7.2 As a distinct and separate power and whether or not the Company shall then be entitled to terminate this Agreement or any Similar Agreements the Company shall at any time while money remains owing under this Agreement be entitled by notice to the Customer to consolidate this Agreement and any then subsisting Similar Agreements so that all such agreements shall remain in force.

7.3 If at any time during the currency of this Agreement money is due from any Group Member to the Customer that Group Member shall be entitled to withhold payment to the Customer until such time as all sums due to the Company under this Agreement are paid in full or if the Company shall so elect by written notice to the Customer the Group Member may set off the amount it owes the Customer against the amount the Customer owes the Company.

## **8. Notices**

- 8.1 Unless stated elsewhere in this Agreement any notice or other communication given under this Agreement shall be in writing and shall be served by delivering it personally or sending it by pre-paid first class recorded delivery post or by fax to the addresses shown in Condition 8.2. Any such notice shall be deemed to be received:-
- a) if delivered personally, at the time of delivery
  - b) in the case of pre-paid recorded delivery post on the second Working day after the date of posting, and
  - c) in the case of fax, at the time of transmission or if this is not a Working Day on the next Working Day after transmission.
- 8.2 The addresses and fax numbers of the parties shown on the Schedule and such other addresses or fax numbers as one party advises the other party by notice served in accordance with this Condition 8
- 8.3 In proving service it shall be sufficient to prove that the envelope containing such notice was addressed to the relevant party at the address set out in the Schedule (or as otherwise notified by that party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery letter or that the notice was transmitted to the fax number of the relevant party set out in the Schedule (or as otherwise notified to that party hereunder).
- 8.4 For the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.

## **9. Variation and Severance**

- 9.1 No variation of this Agreement shall be valid unless it is in writing and signed by each of the parties and states that it is intended as a variation of this Agreement.
- 9.2 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

## **10. Law and Jurisdiction**

- 10.1 This Agreement shall be governed by and construed in accordance with the law of England.
- 10.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this Agreement and irrevocably agrees that proceedings issued out of those courts may without prejudice to the rules of service of such courts be served by delivering such proceedings in accordance with the personal and/or postal provisions contained in Condition 8.