

PART 2: TERMS APPLICABLE TO THE SALE OF GOODS ONLY

15 TITLE AND RISK

- 15.1 Ownership of any Sale Goods (except to the extent that those Sale Goods are digital content) remains with the Supplier until the earlier of:
- 15.1.1 all monies payable to the Supplier by the Customer for the Sale Goods have been paid in full; or
- 15.1.2 if the Customer is a business and the Customer resells the Sale Goods, in which case title to those Sale Goods shall pass to the Customer at the time specified in Clause 16.1.1.
- 15.2 Subject to Clause 16.1.1, if the Customer is a business the Customer may resell or use the Sale Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Sale Goods. However, if the Customer resells the Sale Goods before that time:
- 15.2.1 it does so as principal and not as the Supplier's agent; and
- 15.2.2 title to those Sale Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 15.3 If the Customer is a business, at any time before title to the Sale Goods passes to the Customer, the Supplier may:
- 15.3.1 by notice in writing, terminate the Customer's right under Clause 16.1.2 to resell the Sale Goods or use them in the ordinary course of its business; and
- 15.3.2 require the Customer to deliver up all the Sale Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Sale Goods are stored in order to recover them.
- 15.4 Until ownership of the Sale Goods passes to the Customer, the Customer shall:
- 15.4.1 hold the Sale Goods on a fiduciary basis as the Supplier's bailee;
- 15.4.2 maintain the Sale Goods in satisfactory condition; and
- 15.4.3 keep the Sale Goods insured against all risks for their full price from the time they leave the physical possession or control of the Supplier.
- 15.5 Risk in the Sale Goods will pass immediately to the Customer when the Sale Goods leave the physical possession or control of the Supplier.
- 16 DELIVERY AND COLLECTION
- 16.1 Unless otherwise agreed between the Supplier and the Customer in writing, it is the responsibility of the Customer to collect the Sale Goods from the Supplier. If the Supplier agrees to deliver it will do so at its standard delivery cost, set out in the Commercial Terms Schedule.
- 16.2 The Supplier shall make the Sale Goods available for collection on the date agreed and at the place specified in the Commercial Terms Schedule, as may be amended from time to time by notice in writing from the Supplier.
- 16.3 Where the Customer is a Consumer, and the supply of Sale Goods is delayed by an event outside of the Supplier's control then the Supplier will contact the Consumer as soon as possible and the Supplier will take steps to minimise the effect of the delay. Provided the Supplier does this, the Supplier will not be liable for delays caused by the event, but if there is a risk of substantial delay, the Consumer may contact the Supplier to end the Contract and receive a refund for any Sale Goods which have been paid for but not received.
- 16.4 If the Customer is a business, any dates quoted for delivery or collection of the Sale Goods by the Supplier are approximate only, and the delivery or collection time is not of the essence.
- 16.5 The Supplier shall not be liable for any delay in delivery of the Sale Goods that is caused by a Force Majeure event or the Customer's failure to provide the Supplier with adequate delivery or collection instructions or any other instructions that are relevant to the supply or collection of the Sale Goods.
- 16.6 The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to utilities for the Supplier's employees, sub-contractors and/or agents to allow them to deliver or collect the Sale Goods.
- 16.7 If any of the delivery or collection of the Sale Goods are delayed, postponed and/or cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation.

PART 3: TERMS APPLICABLE TO BOTH THE SALE OF GOODS AND THE HIRE OF GOODS

17 PAYMENT

- 17.1 The amount of any Deposit and/or Rental for Hire Goods and/or monies for Sale Goods shall be as quoted to the Customer or otherwise as shown in the Supplier's current price list from time to time. Where a Deposit is required for the Hire Goods it shall be specified in writing by the Supplier and must be paid in advance of the Customer hiring the Hire Goods. The Supplier may, at its option, also require a payment on account of the Rental in advance of the Customer hiring the Hire Goods (Advance Payment).
- 17.2 In the event that the Supplier notifies the Customer that it requires an Advance Payment, the Customer shall pay the Advance Payment in accordance with the payment terms set out in the Contract.
- 17.3 The Customer shall pay the Deposit and/or Rental for Hire Goods and/or monies for Sale Goods and/or any Advance Payment and/or any other sums payable under the Contract to the Supplier at the time and in the manner agreed in the Commercial Terms Schedule. The Supplier's prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable.
- 17.4 The Supplier may, at its absolute discretion, require the Customer to pay an additional Deposit for the Hire Goods at any time during the Hire Period in the event that the amount of the Rental for the Hire Period may exceed the amount of any Deposit already received from the Customer.
- 17.5 The Supplier shall use the Deposit against payment of the Hire Goods and refund the balance of the Deposit to the Customer if, following inspection of the Hire Goods by the Supplier at the end of the Hire Period, the Supplier is satisfied that the Customer has complied with the terms of this Contract in respect of those Hire Goods.
- 17.6 Any further Payment by the Customer on time is a strict condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash or cleared funds in respect of the full amount outstanding.
- 17.7 If the Customer is a business and the Customer fails to make any payment in full on the due date, or the method of obtaining the next payment proves invalid due to wrong details or a lack of funds, the Supplier may charge the Customer interest (both before and after judgment/decree) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of the Supplier's bank whichever is higher.
- 17.8 If the Customer is a business the Supplier shall pay all sums due to the Supplier under the Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 17.9 The Supplier reserves the right to store the Customer's credit card or debit card details on its password protected customer account system and further reserves the right to use such details against future Rentals made by the Customer.
- 17.10 The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice.
- 18 STATUTORY CANCELLATION RIGHT (ONLY) FOR CONSUMERS
- 18.1 The provisions of this Clause 19 only apply to Customers who are a Consumer for the purpose of any hire or purchase of Goods from the Supplier.
- 18.2 Subject to the remainder of this Clause 19, if the Consumer is based in the UK or EU and entered into the Contract using methods of distance communications only (i.e. online, phone or email) the Consumer will have the right to change its mind within 14 days after the Goods come into its physical possession, and receive a refund.
- 18.3 If the Consumer wishes to change its mind in accordance with Clause 19.2 the Consumer can contact the Supplier using the contact details set out at the end of these terms. When writing to the Supplier, the Consumer can also send a cancellation form as set out in Schedule 1 below.
- 18.4 Where a Consumer exercises its right to cancel under Clause 19 and has made payments in advance for Goods that have not been provided to it, then the Supplier will refund these amounts to the Consumer:
- 18.4.1 within 14 days of receipt of the Goods which have been returned by the Consumer; or
- 18.4.2 (if earlier) within 14 days after the day the Consumer provides evidence that they have returned the Goods; or
- 18.4.3 if no Goods have been provided by the Supplier, within 14 days after the day on which the Supplier is informed of the Consumer's decision to cancel the Contract.
- 18.5 If the Consumer exercises the right to cancel under Clause 19:
- 18.5.1 The Supplier may reduce the refund of the Goods (excluding delivery costs) to reflect any reduction in the value of the Goods, if this has been caused by the Consumer's handling of the Goods which would not be permitted in a shop.
- If the Supplier refunds the Consumer the price paid before the Supplier is able to inspect the Goods and later discovers that the Consumer has handled the Goods in an unacceptable way, the Consumer will be obligated to pay an appropriate amount specified by the Supplier.
- 18.5.2 If applicable, the maximum refund for delivery costs which will be paid by the Supplier will be the costs of delivery by the least expensive delivery method offered by the Supplier.
- 18.6 Where the Contract is with a Consumer and:

- 18.6.1 is for the supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities; and provides for a specific date or period of performance, the Consumer will not have a right to cancel the Contract without incurring any charge or Liability to the Supplier.
- 18.7 Where the Contract is with a Consumer and is for the supply of digital content, the Consumer will not have a right to cancel the Contract after the Consumer has started to download or stream the digital content.
- 18.8 Where a Consumer cancels the Contract under Clause 19, it shall return any Goods which the Supplier has provided to it at its own cost, unless otherwise expressly agreed in writing.
- 18.9 If the Consumer has another legal or contractual right to terminate the Contract, usually if the Supplier has done something wrong, then the Supplier will refund the Consumer the cost of the Goods (where applicable).
- 19 TERMINATION
- 20.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:
- 20.1.1 fails to make any payment to the Supplier when due without just cause;
- 20.1.2 breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- 20.1.3 persistently breaches the terms of the Contract;
- 20.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
- 20.1.5 pledges, charges or creates any form of security over any Hire Goods or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any property of the Customer, has a bankruptcy petition/petition for sequestration presented against it or the Customer takes or suffers any similar action in any jurisdiction;
- 20.1.6 being a company, ceases or threatens to cease to carry on business, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of its assets, any attachment, sequestration or enforcement is made against the Customer, any distress/diligence, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;
- 20.1.7 appears to the Supplier (acting reasonably) due to the Customer's credit rating, to be financially incapable of meeting its obligations under the Contract; and/or
- 20.1.8 appears to the Supplier (acting reasonably) to be about to suffer any of the above events.
- The Supplier can stop providing an ongoing subscription for digital content at any time provided that the Supplier notifies the Customer in writing at least one month in advance and it refunds any sums that the Customer paid in advance for digital content that won't be provided.
- 20.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 20.4 CONSEQUENCES OF TERMINATION
- 20.1 On expiry or termination of the Contract, however caused, the Supplier's consent to the Customer's possession of the Hire Goods shall terminate immediately.
- 20.2 Upon termination of the Contract the Customer shall immediately return the Goods to the Supplier or, as requested by the Supplier, make the Goods available for collection by the Supplier or its authorised representatives. The Supplier may enter, without prior notice, the site where the Goods are held and repossess them. The Customer hereby grants or shall procure the right for the Supplier or its authorised representative to enter the site where the Goods are held in order to collect them.
- 20.3 On termination or expiry of the Contract, for any reason:
- 20.3.1 all monies owed by the Customer to the Supplier shall immediately become due and payable by the Customer;
- 20.3.2 The Customer shall pay all costs and expenses incurred by the Customer in recovering the Hire Goods or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and marketing costs);
- 20.4 In the event that the Customer is a business and the Contract is terminated by the Supplier in accordance with Clause 21.1, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand a sum equal to the whole of the Rental that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Hire Period.
- 20.5 Any repossession of the Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach of the Contract.
- 20.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 21 WARRANTIES
- 21.1 This Clause 22 shall only apply if the Customer is a business.
- 21.2 Except as set out in this Clause 22 all warranties, representations, terms, conditions and undertakings by law implied, implied by custom and fitness for purpose, including those implied by sections 13 to 15 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.
- 21.3 The Supplier warrants that, on delivery, the Goods shall:
- 22.1 Conform in all material respects with the Specification;
- 22.2 Be free from material defects in design, material and workmanship; and
- 22.3 Be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 21.4 Subject to Clause 22.6, if:
- 22.4.1 The Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 22.3;
- 22.4.2 The Supplier is given a reasonable opportunity of examining such Goods; and
- 22.4.3 The Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- 22.5 the Supplier shall, at its option, repair or replace the defective Goods, and/or refund the price of the defective Goods or in respect of Hire Goods, refund the Rental (as applicable) in full for the period that the Hire Goods were not available to the Customer, as applicable.
- 22.6 The Supplier shall have no Liability for the Goods' failure to comply with the warranty set out in Clause 22.3 if:
- 22.6.1 the Customer makes any further use of such Goods after giving notice in accordance with Clause 22.4
- 22.6.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the proper, consistent, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 22.6.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- 22.6.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 22.6.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 22.6.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 22.7 Except as provided in this Clause 22, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 22.3.
- 22.8 These terms and conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 23 LIMITATIONS OF LIABILITY
- 23.1 If the Customer is a business, and the Supplier is found to be liable in respect of any loss or damage to the Customer's property the extent of the Supplier's Liability will be limited to the retail cost of replacement of the damaged property.
- 23.2 If the Customer is a business, the Supplier shall have no Liability to the Customer if, without just cause, any monies due in respect of the Goods have not been paid in full by the due date for payment.
- 23.3 If the Customer is a business, the Supplier shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Goods after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 23.4 If the Customer is a business, the Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer.
- 23.5 If the Customer is a business the Supplier shall have no Liability to the Customer for any of the following losses (whether direct or indirect):
- 23.5.1 consequential losses;
- 23.5.2 economic and/or other similar losses;
- 23.5.3 business interruption, loss of business, contracts and/or opportunity including loss of profits and/or damage to goodwill; and/or
- 23.5.4 special damages and indirect losses however so arising.
- 23.6 If the Customer is a business, subject to Clause 23.2 to 23.5, the Supplier's total Liability to the Customer under and/or arising in relation to any Contract, whether in contract, tort (including negligence) and any statutory and/or common law duty shall not exceed 5 times the amount of the Rental or monies payable for Sale Goods (as applicable) under that Contract or the sum of £1,000

- (or Euro equivalent) whichever is the higher.
- 23.7 If the Customer is a Consumer and the Supplier fails to comply with these terms, the Supplier is responsible for loss or damage suffered by the Consumer that is a foreseeable result of the Supplier breaching the Contract or failing to use reasonable care and skill, but the Supplier is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made, both the Supplier and the Consumer knew it might happen.
- 23.8 If the Customer is a Consumer, the Supplier only supplies the Goods for domestic and private use. If the Consumer uses the Goods for any commercial, business or re-sale purpose the Supplier will have no liability to the Consumer for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 23.9 Nothing in the Contract shall exclude or limit the Liability of either party for fraud, death or personal injury due to that party's negligence, nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.
- 24 PERSONNEL AND OPERATING INSTRUCTIONS
- 24.1 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors including a plant operator and/or driver (hereafter called Operator), as though they were its own acts and/or omissions under the Contract.
- 24.2 Where the Supplier has provided an Operator, that individual shall work under the management and direction of the Customer and will be treated as an agent of the Customer. The Customer shall be responsible for the management and supervision of the Operator including their health and safety and will be exclusively responsible for any site costs and/or claims including damage (without prejudice to Clause 23.9) that are incurred as a result of using an Operator.
- 24.3 When operating any Hire Goods, the Customer shall ensure that any employees, agents or contractors that use the Hire Goods are, if applicable, adequately and sufficiently qualified and trained to operate the Hire Goods in accordance with all current and applicable legislation and the Supplier's own instructions.
- 24.4 Where operating instructions are provided by the Supplier and/or the manufacturer of the Goods, it is the Customer's responsibility to ensure that its employees, agents and/or contractors are provided with all necessary information and where required management support to understand them.
- 24.5 The Supplier reserves the right to provide operating instructions in a variety of different formats including hardcopy, digital and/or as a QR code.
- 24.6 The Customer is solely responsible for providing its employees, agents and/or contractors with a suitable device for accessing any digital and QR codes.
- 24.7 When conditions do not allow internet access, it is the Customer's exclusive responsibility to make alternative arrangements such as downloading and providing the Operator with hardcopy instructions.
- 25 GENERAL
- 25.1 Each hire of an item of Hire Goods or purchase of an item of Sale Goods shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Goods or the purchase of other Sale Goods.
- 25.2 For claim prevention and to demonstrate proof of delivery, the Supplier reserves the right to take images of the person receiving the delivery of any Hire Goods and/or Sale Goods. The Supplier also reserves the right to take images and voice recordings of the person placing the order.
- 25.3 When dealing as a Consumer, if the Customer has any questions or complaints, it may contact the Supplier by telephoning its customer service team on 01608 661677 or by e-mailing it at paulgibbs@fossewayhire.com
- 25.4 If the Customer is a business the Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Supplier and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.
- 25.5 If the Customer is a business no waiver by the Supplier of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the Supplier and the Customer shall nevertheless agree that the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 25.6 If the Customer is a business the Supplier shall have no Liability to the Customer for any delay and/or non-performance of a Contract to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event, then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 25.7 All third-party rights are excluded and no third parties shall have any rights to enforce the Contract in virtue of the Contracts (Rights of Third Parties) Act 1999. This shall not apply to any finance company with whom the Supplier has an outstanding finance agreement relating to the Hire Goods. Such finance company shall, subject to the Supplier's consent, have the right to enforce the Contract as if they were the Supplier.
- 25.8 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 25.9 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 26 LEGAL JURISDICTION
- 26.1 Whether the Customer is a Consumer or Business, these terms are governed exclusively by English law.
- 26.2 If the Customer is a business, the Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter (whether or not arising in contract) shall be governed by and construed in accordance with the law of England and Wales.
- 26.3 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this contract or its subject matter or formation, unless all parties to the Contract agree to arbitration.
- 26.4 If the Customer is a Consumer, wherever the Consumer lives the Consumer can bring a claim against the Supplier in the English courts. If the Consumer lives in Wales, Scotland or Northern Ireland, the Consumer can also bring claims against the Supplier in the courts of the country the Consumer lives in. The Supplier can also claim against the Consumer in the court of the country the Consumer lives in. Nothing in these terms affects the Consumer's rights to rely on such mandatory provisions of local law.
- 26.5 Advice about Customers' legal rights where they deal as a Consumer is available from their local Citizens Advice Bureau or Trading Standards office, or if based in the Republic of Ireland your local office of the Director of Consumer Affairs or Citizens Information Centre. Nothing in these terms and conditions will affect these legal rights.
- 26.6 If a Consumer is not happy with how the Supplier has handled any complaint, Consumers can submit a complaint to the Citizens Advice Bureau via their website at <https://www.citizensadvice.org.uk/>. The Citizens Advice Bureau will not charge the Consumer for making a complaint and if the Consumer is not satisfied with the outcome the Consumer can still bring legal proceedings.
- 27 ARBITRATION
- 27.1 Arbitration is available to both Consumer and Business Customers, this is called alternative dispute resolution, a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court.
- 27.2 All parties to the Contract must agree to Arbitration;
- 27.3 If Arbitration is agreed, the following Clauses shall apply;
- 27.4 Any dispute, difference, or disagreement between the Parties arising out of or in connection with any dispute shall, if agreed by all parties to the Contract, be referred to Arbitration in accordance with this Clause 27.
- 27.5 The Customer and Supplier shall consult The Chartered Institute of Arbitrators <https://www.citab.org/dispute-services/dispute-appointment-service/> and agree an appropriately qualified arbitrator.
- 27.6 The seat of the arbitration shall be in London.
- 27.7 The arbitration shall be governed by English law.
- 27.8 The language of the arbitration shall be English.
- 27.9 The Parties shall jointly agree on, and jointly appoint, the arbitrator not later than 30 days after the service of a request in writing by either Party on the other Party requesting it to do so; but
- 27.10 If the Parties fail to agree upon and appoint an arbitrator within the period Clause 27.9, either Party may apply to the Law Society of England & Wales, requesting that the President for the time being of the Law Society of England & Wales to appoint an arbitrator, and in that event, the Parties shall accept that appointment.
- 28 SEVERABILITY
- 28.1 In the event that one or more of the provisions of these terms and conditions is or are found to be unlawful, invalid, or otherwise unenforceable, that or those provisions(s) shall be deemed severed from the remainder of the Agreement. The remainder of these Clauses shall be valid and enforceable.
- 29 SUPPLIER

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