

## TERMS AND CONDITIONS OF HIRE AND SALE

### 1. INTERPRETATION

- 1.1 In these conditions the following words have the following meanings: “**Contract**” means a contract, which incorporates these conditions and made between the Customer and the Supplier for the hire of Hire Equipment and/or the sale of Products. “**Customer**” means the firm, company or other organisation hiring the Hire Equipment. “**Deposit**” means any advance payment required by the Supplier in relation to the **Hire Equipment** which is to be held as security by the Supplier. “**Force Majeure**” means any event outside the party’s reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental action and any other similar event. “**Hire Equipment**” means the machine, article, tool, and/or device together with any accessory specified in a Contract, which are hired by the Customer. “**Hire Period**” means the period commencing when the Customer holds the Hire Equipment on hire and ending upon any of the following events (i) the physical return of the Hire Equipment by the Customer into the Suppliers possession; or (ii) the physical repossession or collection of The Hire Equipment by the Supplier. “**Liability**” means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses or liabilities. “**Products**” means the products sold to the Customer by the Supplier. “**Hire Charges**” means the Suppliers charging rate for the hire of the Hire Equipment, which is current from time to time during the Hire Period. “**Supplier**” means **Marchstream Tool Hire Limited** and will include its employees, servants, agents and/or duly authorised representatives. “**Services**” means the services and/or work (if any) to be performed by the Supplier in conjunction with the hire of Hire Equipment including any delivery and/or collection service for the Hire Equipment.

### 2. BASIS OF CONTRACT.

- 2.1 Hire Equipment is hired subject to the being available for hire to the Customer at the time required by the Customer. The Supplier will not be liable for any loss suffered by the Customer as a result of the Hire Equipment being unavailable for hire where the Hire Equipment are unavailable due to circumstances beyond the Suppliers control.
- 2.2 Where the hire of Hire Equipment is to a Customer who is an individual and the hire would be covered by the Consumer Credit Act 1974 the duration of the Hire Period shall not exceed 3 months, after which time the Contract shall be deemed to have automatically terminated. Accordingly the hire of any Hire Equipment is not covered by the Consumer Credit Act 1974.
- 2.3 Nothing in this Contract shall exclude or limit any statutory rights of the Customer, which may not be excluded or limited due to the Customer acting as a consumer.

### 3. PAYMENT

- 3.1 The amount of any Deposit, Hire Charges and/or charges for any Services shall be quoted to the Customer. Where a Deposit is required for the Hired Goods it must be paid in advance of the Customer hiring the Hire Equipment.
- 3.2 The Customer shall pay the Hire Charges for any Services, monies for any Products and/or any other sums payable under the Contract to the Supplier at the time and manner agreed. The Suppliers prices are, unless otherwise stated, exclusive of VAT for which the Customer shall additionally be liable.
- 3.3 Payment by the Customer on time under the Contract is an essential 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.
- 3.4 If the Customer fails to make payment in full on the due date the Supplier may charge the Customer interest on the amount unpaid at a rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable).
- 3.5 Any moneys received by the Supplier from the Customer may be applied by the Supplier at its option against any administrative costs and interest charged prior to application against any principal sums due from the customer against which it may be applied in any order.
- 3.6 The Customer shall pay all sums due to the Supplier under the Contract without any set off, deduction, counterclaim and/or any withholding of moneys.
- 3.7 The Supplier may set a reasonable Credit Limit for the Customer. The Supplier reserves the right to terminate the Contract or suspend the Contract for hire of the Hire Equipment and/or the provision of Services if allowing it continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.

### 4. RISK OWNERSHIP AND INSURANCE

- 4.1 Risk in the Hire Equipment and any Products will pass immediately to the Customer when they leave the physical possession or control of the Supplier.
- 4.2 Risk in the Hire Equipment will not pass back to the Supplier from the Customer until the Hire Equipment are in the physical possession of the Supplier. This shall apply even though the Supplier has agreed cease charging the Hire Charges.
- 4.3 Ownership of the Hire Equipment remains at all times with the Supplier. The Customer has no rights, title or interest in the Hire Equipment except that they are hired to the Customer. Ownership of any Products remains with the Supplier until all moneys payable to the supplier by the Customer for the Products have been paid in full.
- 4.4 The Customer must not deal with the ownership or interest in the Hire 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.
- 4.5 The Supplier may provide reasonably priced insurance in respect of the Hired Goods at an additional cost to the Hire Charges. Alternatively the Supplier may require the Customer to insure the Hire Equipment on such reasonable terms and for such reasonable risks as the supplier may specify. The proceeds of any such

insurance shall be held in trust for the Supplier and be paid to the Supplier on demand.

### 5. DELIVERY, COLLECTION AND SERVICES

- 5.1 It is the responsibility of the Customer to collect the Hire Equipment from the Supplier and return them to the Supplier at the end of the Hire Period. If the Supplier agrees to deliver or collect the Hire Equipment to/from the Customer it will do so at an additional cost to the Hire Charges and will form part of the Contract.
- 5.2 Where the Supplier provides Services the person performing the Services are servants of the Customer and once the Customer instructs such person they are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and any damage which occurs as a result of such persons following the Customers instructions, guidance and/or advice except to the extent that the persons performing the Services are negligent.
- 5.3 The Customer will allow and/or procure sufficient access to and from the relevant site and provide sufficient unloading space, facilities, equipment and access to utilities for the supplier’s employees, sub-contractors and/or agents to allow them to carry out the Services. The Customer will ensure that the site where the Services are to be performed is, where necessary, cleared and prepared before the Services are due to commence.
- 5.4 If any Services are delayed, postponed and/or are cancelled due to the Customers failing to comply with its obligations the Customer will be liable to pay the Supplier’s additional charges from time to time for such delay, postponement and/or cancellation.

### 6. CARE OF HIRE EQUIPMENT

- 6.1 The Customer shall:-
- 6.1.1 not remove any labels from and/or interfere with the Hire Equipment, their working mechanisms or any other parts of them and shall take reasonable care of the Hire Equipment and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer;
- 6.1.2 notify the supplier immediately after any breakdown, loss and/or damage to the Hire Equipment;
- 6.1.3 take adequate and proper measures to protect the Hire Equipment from theft. Damage and/or other risks;
- 6.1.4 notify the Supplier of any change of its address and upon the Suppliers request provide details of the location of the Hired Goods;
- 6.1.5 permit the Supplier at all reasonable times to inspect the Hire Equipment including providing access to where the Hire Equipment are situated
- 6.1.6 keep the Hire Equipment at all times in its possession and control and not to remove the Hire Equipment from the country where the Supplier is located without written consent of the Supplier;
- 6.1.7 not do or omit to do anything which will or may be deemed to invalidate any insurance policy related to the Hire Equipment;
- 6.1.8 not continue to use the Hire Equipment where they have been damaged and will notify the Supplier immediately if the Hire Equipment are involved in an accident resulting in damage to the Hire Equipment, other property and/or injury to any person; and
- 6.1.9 where the Hire Equipment require fuel, oil and/or electricity ensure that the proper type, and/or voltage is used and that, where appropriate, the Hire Equipment are properly installed by a qualified person.

### 7. BREAKDOWN.

- 7.1 Allowances will be made in relation to the Hire Charges to the Customer for any non-use of the Hire Equipment due to breakdown caused by a development of an inherent fault and/or fair wear and tear on condition that the Customer informs the Supplier as soon as practicable of the breakdown.
- 7.2 The Customer shall be responsible for all expenses, loss (including loss of Hire Charges) and/or damage suffered by the Supplier arising from any breakdown of the Hire Equipment due to the Customer’s negligence misdirection and/or misuse of the Hire Equipment.
- 7.3 The Supplier will at its own cost carry out all routine maintenance and repairs to the Hire Equipment during the Hire Period and all repairs, which are required due to fair wear and tear and/or an inherent fault in the Hire Equipment. The Customer will be responsible for the cost of all repairs necessary to the Hire Equipment which arise otherwise than as a result of fair wear and tear, an inherent fault and/or the negligence of the Supplier while carrying out routine maintenance and/or repairs.
- 7.4 The Customer must not repair or attempt to repair the Hire Equipment unless authorised in writing by the Supplier.

### 8. LOSS OR DAMAGE TO THE HIRE EQUIPMENT

- 8.1 If the Hire Equipment are returned in a damaged, unclean and/or defective state except where due to fair wear and tear and/or an inherent fault in the Hire Equipment the Customer shall be liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Hire Equipment to a condition fit for re-hire and to pay the Hire Charges, in accordance with the provisions of clause 8.3. until such repairs and/or have been completed.
- 8.2 The Customer will pay the Supplier the replacement cost on a new for old basis of any Hire Equipment which are lost, stolen and/or damaged beyond economic repair during the Hire period less the amount paid to the Supplier under any insurance policy taken out in accordance with these conditions.

8.3 The Customer shall pay the Hire Charges for the Hire Equipment up to and including the date it notified the Supplier that the Hire Equipment had been lost, stolen and/or damaged beyond economic repair. From that date until the Supplier has replaced such Hire Equipment the Customer shall pay, as a genuine pre-estimate of lost profit, based on two thirds of the Hire Charges that would have been applied for such Hire Equipment for that period. The Supplier shall use its reasonable commercial endeavours to purchase replacements as quickly as possible.

9. TERMINATION BY NOTICE

9.1. If the Hire Period has a fixed duration, subject, subject to the provisions of section 10 neither the Customer nor the Supplier shall be entitled to terminate the Contract before the expiry of that fixed period unless agreed with the other party.

9.2 If The Hire Period does not have a fixed duration either the Customer or the Supplier is entitled to terminate the Contract upon giving to the other party any agreed period of notice.

9.3 If no period of notice has been agreed or specified the Customer may terminate the Hire Period by the physical return of the Hire Equipment to the Supplier.

9.4 The Supplier shall be entitled to terminate the hire of the Hire Equipment giving the Customer not less than 2 days notice to the Customer.

10. DEFAULT

10.1 If the Customer:-

10.1.1 fails to make any payment to the Supplier when due without just cause;

10.1.2 Breaches the terms of the Contract and, where the breach is capable of remedy, has not been remedied within 14 days of receiving written notice requiring the breach to be remedied;

10.1.3 Persistently breaches the terms of the Contract;

10.1.4 Pledges charges or creates any form of security over the Hire Equipment

10.1.5 Being a company, enters into voluntary or compulsory liquidation, has a receiver, administrator or an administrative receiver appointed.

10.1.6 Appears reasonably to the Supplier to be about to suffer any of the; then the Supplier shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 10.2 below.

10.2 If any of the events set out in clause 10.1 above occur in relation to the Customer them: -

10.2.1 the Supplier may enter without prior notice, any premises of the Customer (or premises of third parties with their consent) where the Hire Equipment and/or Products owned by the Supplier may be and repossess any Hire Equipment and/or Products

10.2.2 the Supplier may withhold the performance of any Services and cease any Services in progress under this and any other Contract with the Customer.

10.2.3 The Supplier may immediately cancel, terminate and/or suspend without Liability to the Customer the Contract and/or any other Contract with the Customer; and/or

10.2.4 all moneys owed by the Customer to the Supplier shall become immediately due and payable.

10.3 Any repossession of the Hire Equipment and/or Products shall not affect the Supplier's right to recover any damages in respect of any breach which occurred prior to repossession of the Hire equipment and/or Products.

10.4 Upon termination of the Contract the Customer shall immediately:

10.4.1 return the Hire Equipment to the Supplier or make the Hire Equipment available for collection by the Supplier and requested by the Supplier; and

10.4.2 pay to the Supplier all arrears of Hire Charges, charges for any Services, moneys for any Products and/or any other sums payable under the Contract

11. LIMITATIONS OF LIABILITY

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

11.2 If the Supplier is found to be liable in respect of any loss or damage to the Customer's property the extent of the Suppliers Liability will be limited to the retail cost of replacement of the damaged property.

11.3 Any defective Hire Equipment must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any Liability for defective Hire equipment.

11.4 The Supplier will have no Liability to the Customer if, without just cause, any moneys due in respect of the Hire Equipment and/or the Services have not been paid in full by the due date for payment.

11.5 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 Hire Equipment and/or Services after the defect has become apparent or suspected or should reasonably become apparent to the Customer.

11.6 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.

11.7 The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any insurance policy arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any rights of subrogation they may have against the Supplier.

11.8 The Supplier shall have no Liability to the Customer for any: -

11.8.1 Consequential losses (including loss of profits and/or damage to goodwill)

11.8.2 economic and/or other similar losses;

11.8.3 special damages and indirect losses and/or

11.8.4 business interruption, loss of business, contracts and/or opportunity.

11.9 The Suppliers total Liability to the Customer in relation to any Contract shall not exceed 5 times the amount of Hire Charges and charges for Services under that Contract.

11.10 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: -

11.10.1 Liability for breach of contract

11.10.2 Liability in tort/delict (including negligence); and

11.10.3 Liability for breach of statutory and/or common-law duty; except clause 11.9 above which shall apply once only in respect of all the said types of Liability.

11.11 Nothing in this Contract shall exclude or limit the Liability of the Supplier for Death or personal injury due to the Suppliers negligence nor exclude or limit any other type of Liability, which is not permitted to exclude as a matter of law.

12. GENERAL

12.1 Upon termination of the Contract the provision of clauses 3.2,3.4,3.5,8.1,8.2,8.3 and section 6 shall continue in full force and effect

12.2 Each hire of an item shall form a distinct Contract, which shall be separate to any other Contract relating to other Hire Equipment.

12.3 The Customer shall be liable for the acts of its employees, agents, servants and other sub-contractors as though in its own acts and/or omissions under the Contract.

12.4 The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims (including legal costs on a full indemnify 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/delictual act and/or omission and/or any breach of statutory duty by the Customer.

12.5 No waiver by the Supplier of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any competent authority to be unenforceable in the whole or in part holds any provision 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.

12.6 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 hat such event or events delayed such performance.

12.7 All third party rights are excluded and no third parties shall have rights to enforce the Contract. This shall not apply to any finance company with whom the Supplier has an outstanding finance agreement relating to the Hire Equipment. Such finance company shall, subject to the Suppliers consent, have right to enforce this contract as if they were the Supplier. This Contract is governed by the and interpreted in accordance with the law of the country where the Supplier is located and that country will have exclusive jurisdiction in relation to this Contract.

**Credit Checking**

**We will make a search with a credit reference agency, which will keep a record of that search and share that information with other businesses. We may also make enquires about principal directors with a credit reference agency.**

I/We agree to the terms & Conditions

Signature.....

Position.....

Company Name .....

Date .....