

ICR GENERAL TERMS AND CONDITIONS FOR SALE & RENTAL OF GOODS & SERVICES



1 INTERPRETATION

1.1 In these Terms and Conditions:

"**ICR**" means ICR Integrity Limited, a company incorporated and registered in England and Wales with company number 07602331 and having its registered office at Moss Mechanical Onsite Services Ltd, Unit 10 Westmorland Business Park, Gilthwaiterigg Lane, Kendal, Cumbria, LA9 6NS.

"**Contract**" means the agreement formed in accordance with clauses 4.3 and 4.4 of these Terms and Conditions, and includes any special terms and conditions agreed in writing between the **Parties**.

"**Customer**" means the person, persons, firm or company named in the **Purchase Order** or who accepts a **Quotation** or whos **Purchase Order** is accepted by **ICR**.

"**Delivery Date**" means the date(s) upon which the **Goods** or **Services** shall be delivered as specified in the **Purchase Order**.

"**Goods**" means the **Goods** (including any installment of the **Goods** or parts of them) which ICR is to sell, hire or supply in accordance with this Contract.

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and neighbouring and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**Party / Parties**" means either **ICR** and/or the **Customer**.

"**Price**" means the price, exclusive of VAT, payable to **ICR** by the **Customer** and as detailed in the **Purchase Order**[or **Quotation**].

"**Purchase Order**" means the written order document issued by the **Customer** and subsequently accepted by **ICR**.

"**Quotation**" means **ICR's** written **Quotation** for the **Goods** or **Services**.

"**Services**" means any service to be provided by **ICR** to the **Customer** as detailed in the **Purchase Order**[or **Quotation**].

1.2 All instructions, notices, agreements, authorisations, approvals and acknowledgements provided in accordance with this Contract shall be in writing and in the English language.

1.3 Any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.

1.4 Words importing the singular shall include the plural, and words importing a particular gender include all genders and vice versa.

2 INVALIDITY AND SEVERABILITY

2.1 If any provision of this Contract, shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

3 ENTIRE AGREEMENT

3.1 This Contract (together with any special terms and conditions, if any, set out in the [Quotation or]Purchase Order) constitutes the entire agreement between the Parties, supersede any previous agreement or understanding and may not be varied except in writing between the Parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

3.2 The application of the Customer's own general terms and conditions are hereby expressly excluded, and these shall not apply even if ICR should be notified of their existence or has received them from the Customer.

4 ORDER AND ACCEPTANCE

4.1 ICR will sell, supply or hire and the Customer shall purchase or hire the Goods or Services in accordance with this Contract.

4.2 All Purchase Orders [and /or Quotations] must be in writing.

4.3 Each Purchase Order constitutes an offer by the Customer to purchase or hire the Goods or Services in accordance with these Terms and Conditions.

4.4 A Purchase Order shall only be accepted when ICR issues written acceptance of the Purchase Order at which point and on which date this Contract shall come into existence.

5 SPECIFICATION

5.1 The Customer is responsible to ICR for ensuring the accuracy of the details contained within any Purchase Order (including any applicable specification) submitted by the Customer.

6 DELIVERY

6.1 Delivery of Goods will take place in accordance with the INCOTERMS agreed upon between the Parties when entering into any agreement. If no INCOTERMS have been agreed upon, the delivery shall be made ex works ICR premises in accordance with INCOTERMS 2000.

6.2 Unless otherwise stated in writing, the sale of Goods is on an ex works basis. Where ICR agrees to deliver the Goods otherwise than at ICR's premises, the Customer will be liable to pay any charges for transport, packaging and insurance

6.3 Although ICR undertakes to execute orders and effect delivery within a reasonable time, time for delivery of Goods will not be of the essence, any dates quoted for delivery of Goods are approximate and ICR will not be liable for any delay in delivery however caused. ICR will contact the Customer at the earliest possible opportunity to notify them of any such delay and the Parties will arrange a revised Delivery Date.

7 VALIDITY OF QUOTATION

7.1 Each Quotation given by ICR shall not constitute an offer,

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	and shall only be valid for thirty (30) days from its date of issue.	9.9	The Customer is not permitted to transfer the hired Goods or any part of the hired Goods to any other site of operation without ICR's prior written consent.
8	USE		
8.1	All Goods must only be used for the purpose they were intended.	9.10	The Customer must allow ICR or their insurers access to the hired Goods at all reasonable times throughout the duration of hire for the purpose of inspection, testing, maintenance, adjusting, repairing or replacing the same.
8.2	ICR is not liable for faults, defects, discrepancies, damage, use of non-approved parts, incorrect handling, inadequate maintenance or overload of supplied Goods.	9.11	Should any loss of or damage to the hired Goods or any part thereof be caused by the Customer or any other third party, ICR reserve the right to charge the Customer for replacement, spares or repairs on a cost plus ten percent (10%) basis, in addition to the agreed hire Price and any associated legal fees incurred.
9	HIRED GOODS		
9.1	All hired Goods must be used from the site of operation agreed with ICR and specified in the [Purchase Order].	9.12	ICR accept no liability for loss or damage to Goods during the hire period other than damage resulting from fair wear and tear.
9.2	All hired Goods must be returned to ICR for essential servicing, repair and maintenance. ICR cannot accept any liability for loss or damage to equipment or Customer's equipment if the hired Goods have not been serviced, repaired or maintained in accordance with ICR's instructions or stipulated period within the accompanying operating and maintenance manual.	10	SAFETY
9.3	All hired Goods must be returned to ICR's premises at the end of any hire period in the condition they were in when it was delivered, apart from damage resulting from fair wear and tear. If the hired Goods are not in the required condition at such time, ICR may repair the hired Goods at the expense of the Customer, and the daily hire rate will run until the necessary repairs have been carried out. Alternatively, ICR may claim damages from the Customer for the losses suffered due to the hired Goods not being in the required condition upon return.	10.1	The Goods may be accompanied by an Operating and Maintenance Manual and the Customer must take account of all safety guidance provided within the Operating and Maintenance Manual and any written or verbal instructions from ICR.
9.4	In the event of breakdown of the hired Goods, the Customer must inform ICR in writing immediately and ICR will attempt to repair or replace the hired Goods with substituted Goods of a similar type and condition. The Customer will have no right to claim against ICR for loss or damage resulting from the hired Goods breakdown period.	11	PRICING
9.5	Any defect in the quantity or condition of the hired Goods or their failure to correspond with specification must be notified to ICR within twenty four (24) hours of their delivery to the site of operation. Without receipt of this notification ICR will assume the delivered hired Goods are in good working order, complete and fit for purpose.	11.1	The Customer shall pay ICR the Price and any additional sums which are agreed in writing between ICR and the Customer for the sale or hire of Goods or Services or which, in ICR's sole discretion, are required as a result of the Customer's instructions or lack of instructions or other cause attributable to the Customer.
9.6	The Customer is responsible for the safe keeping of the Goods throughout the duration of the hire period and must ensure they are used in a workmanlike manner, for the purpose for which they were intended and not used beyond their capacity or in a manner likely to result in undue deterioration and carry out all routine maintenance as stipulated in the accompanying Operating and Maintenance Manual. Failure to carry out routine maintenance or carry out specific instructions from ICR may cause damage to the hired Goods and resulting repair or replacement will be charged to the Customer.	11.2	Unless otherwise agreed, all pricing is exclusive of any applicable Value Added Tax, taxes, with holding taxes, customs and duty, freight, destination and forwarding charges. If such expenses occur, they will be added to the price and invoiced to the Customer accordingly.
9.7	The Customer must ensure that all hired Goods are used in accordance with any statutory regulations, codes of practice and working loads affecting such Goods. ICR accept no liability for damage or loss caused by inappropriate use of the Goods during any hire period.	11.3	ICR reserves the right to adjust the Price to reflect any increase in the cost to ICR which is due to any factor beyond its control (such as, without limitation; foreign exchange rate fluctuation, currency regulation, alteration of duties, changes of legislation, significant increases in the cost of labour or raw materials).
9.8	The Customer must ensure that all personnel working with the hired Goods are suitably trained, competent and possess necessary permits to operate the Goods.	11.4	Pricing may also be adjusted to take account of any change in delivery dates, quantities or specifications requested by the Customer as detailed on a variation order agreed between the Parties, or any delay caused by any instructions of the Customer or failure of the Customer to give ICR adequate information or instructions. The Customer will normally be advised in writing of any such variation in the Price.
		11.5	Pricing for hired Goods is calculated from the date the Goods leaves ICR's premises until the date it returns to the same place and confirmation of off-hire date is communicated in writing to the Customer, unless agreed otherwise in writing with ICR.
		12	PAYMENT
		12.1	The Customer will pay the Price detailed within ICR's invoice within thirty (30) days of the date of invoice.
		12.2	The time of payment of the Price shall be of the essence.
		12.4	If the Customer disputes any item on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in

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any respect, the Customer shall notify ICR of the reason for dispute as soon as practicable and request a credit note for the unaccepted part or whole of the invoice as applicable.

12.5 If the Customer fails to make any payment on any due date then, without prejudice to any other right or remedy available to ICR, ICR may:

- a) suspend or cancel this Contract or any other contract between the Parties or suspend any further deliveries to the Customer, and/or
- b) charge the Customer interest on any amount unpaid, at the rate of 2.5 per cent per annum above the Bank of Scotland base rate from time to time, until payment in full is made and shall be calculated pro rata on a daily basis.

13 VARIATIONS

13.1 If either Party discovers a need for variation to this Contract, ICR will issue a variation order ("VO") to notify the Customer thereof. As a minimum this notice shall contain information regarding the cause of the variation and also any cost and delivery time or other consequences that the variation will or may have for the Customer.

13.2 The proposed VO will be binding upon the Customer unless the Customer issues a written objection within five (5) working days of receipt of the VO.

14 PACKAGING

14.1 Goods will be packed, secured and labelled in accordance with accepted industry practice and unless otherwise agreed in writing, ICR will apply its own labelling to the Goods.

14.1 Where the Customer requests or ICR advise additional special packaging, this may be subject to an additional charge payable by the Customer.

15 TESTING AND INSPECTION

15.1 ICR will carry out required testing and inspection and provide a certificate of conformity upon delivery of the Goods if required by the Customer. Any additional inspection, testing, certification or documentation requires ICR's written agreement and may be subject to additional costs which shall be borne by the Customer.

16 TITLE AND RISK

16.1 Risk of damage to or loss of the Goods shall pass to the Customer:

- a) Where Goods are to be delivered at ICR's premises, at the time when ICR notifies the Customer that the Goods are available for collection, or from the moment the Goods are loaded onto Customer arranged transport (whichever occurs earlier); or
- b) Where the Goods are to be delivered other than at ICR's premises, at the point of delivery.

16.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, title in the Goods supplied for sale shall not pass to the Customer until ICR has received full payment of the Price.

16.3 In case of Goods for hire, title to the Goods remains with ICR throughout the duration of the hire and risk passes to the Customer upon delivery and passes back to ICR once the Goods have been returned to ICR's premises.

16.4 Until ownership of and title to the Goods has passed to the Customer, ICR may at any time, require the Goods to be returned, failing which ICR will be entitled to enter the Customer's premises, or those of any third party where the Goods are stored to take possession of the Goods without prejudice to the Customer's obligation to make payment for the Goods and to any other rights available to ICR by statute or common law.

16.5 Until ownership of and title to the Goods has passed to the Customer, the Customer is not entitled to sell, pledge or legally dispose of the Goods.

17 WARRANTIES

17.1 Subject to the following provisions, ICR warrants that the Goods will correspond with their specification at the date of delivery and will be free from defects in material and workmanship for a maximum period of twelve (12) months from such a date.

17.2 The warranty in clause 17.1 above is given by ICR subject to the following conditions:

- a) ICR will have no liability for any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, use beyond normal capacity, failure to follow ICR's instructions (oral or written), misuse, inadequate maintenance, alteration or repair of the Goods without ICR's written approval.
- b) ICR will have no liability under the warranty if the Customer has not paid the Price payable for the Goods to ICR in full,
- c) the warranty does not extend to parts, materials or equipment that are not manufactured or assembled by ICR, in respect of which the Customer will only be entitled to the benefit or such warranty or guarantee as is given by the manufacturer of that item to ICR.
- d) the warranty extends to Goods only and does not extend to the provision of Services or labour required to rectify any defect.

18 DEFECTS

18.1 Any claim by the Customer which is based on any defect in the quantity or condition of the Goods or their failure to correspond with specification shall be notified to ICR within seven (7) working days from the date of delivery to the site of operation or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. Clause 9 (Hired Goods) sets out the terms and conditions that apply in relation to defective hired Goods.

18.2 If delivery is not refused, and the Customer does not notify ICR in accordance with clause 18.1 above, the Customer will not be entitled to reject the Goods and ICR will have no liability for such defect or failure, and the Customer will be bound to pay the Price as if the Goods had been delivered in accordance with the specification.

18.3 Where a valid claim in respect of the Goods, which is based on a defect in the quality or condition of the Goods or their failure to meet specification, is notified to ICR in accordance with these Terms and Conditions, ICR may replace the Goods (or the part in question) free of charge or, at ICR's sole discretion, refund to the Customer the Price (or a proportionate part of the Price) payable for the relevant Goods, in which case ICR will have no further liability to the Customer relation to the relevant Goods.

19 INTELLECTUAL PROPERTY RIGHTS

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19.1 ICR hereby grants the Customer a limited, worldwide, non-exclusive, non-transferrable licence to use the Intellectual Property Rights owned by ICR and which form part of the Goods and/or Services supplied to the Customer, solely for the purpose of receiving and using the applicable Goods and/or Services. Nothing in this Contract shall confer any right of ownership in the Intellectual Property Rights owned by ICR to the Customer.

19.2 All designs, drawings and specifications and other information which ICR supplies in connection with a Quotation or Purchase Order are confidential and remain the property of ICR and must not be disclosed to any third party without ICR's prior written consent.

19.3 The Intellectual Property Rights to all technical documents provided by ICR under this Contract including operating manuals, advertising material, certificates, drawings, test results, improvements and new developments will remain the property of ICR.

20 LIMITATION OF LIABILITY

20.1 ICR's entire liability under or in connection with these Conditions shall not exceed the Price stated in the Purchase Order or Quotation.

20.2 Nothing in this Contract shall limit or exclude ICR's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- e) any other liabilities which cannot be limited or excluded by law.

21 INDEMNITY ARRANGEMENTS

21.1 The Customer will be responsible for and shall save, indemnify, defend and hold harmless ICR from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- a) loss of or damage to property of the Customer whether owned, hired, leased or otherwise provided by the Customer arising from, relating to or in connection with the performance or non-performance of this Contract; and
- b) personal injury including death or disease to any person employed by the Customer arising from, relating to or in connection with the performance or non-performance of this Contract; and
- c) subject to any other express provisions of this Contract, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss of or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Customer. For the purposes of this clause 21 "third party" will mean any party who is not a member of the Customer's or ICR's group.

22 CONSEQUENTIAL LOSS

22.1 The Customer will save, indemnify defend and hold harmless ICR from the Customer's own consequential loss and third parties consequential loss howsoever arising from, relating to or in connection with the performance or non-performance of this Contract.

22.2 Consequential loss shall mean consequential or indirect loss under Scottish law; and loss of production, product, use, revenue, profit or anticipated profit (if any), in each case whether direct or indirect and whether or not foreseeable at the time the Parties enter into this Contract.

23 INSURANCE

23.1 The Parties shall maintain levels of insurance sufficient to cover their liabilities and obligations under this Contract and at law, and shall exhibit such certificates of insurance and evidence of payment of premiums where reasonably requested by the other Party.

23.2 Unless otherwise agreed in writing, the Customer undertakes at their own expense to take out full value insurance against damage to the Goods supplied, for the period of transfer of risk until payment has been made in full or the risk in the Goods has passed back to ICR after the end of a hire period.

24 FORCE MAJEURE

24.1 ICR will not be liable to the Customer or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform any of ICR's obligations under this Contract, if the delay or failure was due to any cause beyond ICR's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond ICR's reasonable control:

- a) act of God, explosion, flood, fire, accident or natural physical disaster
- b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- c) Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- d) import or export regulations or embargoes;
- e) strikes, lock outs or other industrial actions or trade disputes (whether involving employees of ICR or third party);

25 TRANSFER / ASSIGNMENT

25.1 ICR may assign, transfer, novate or subcontract any or all of its rights or obligations under this Contract.

25.2 The Customer may not assign, transfer, novate or subcontract any or all of its rights or obligations under this Contract without the prior written consent from ICR.

26 CANCELLATION

26.1 No Purchase Order, once accepted by ICR, [or accepted Quotation] may be cancelled by the Customer except with ICR's written agreement. The Customer will indemnify ICR in full for all costs (including the cost of any labour and materials used) and expenses incurred by ICR prior to or as a result of cancellation.

26.2 Where a Purchase Order that has been accepted by ICR [or accepted Quotation] is cancelled, ICR reserve the right to impose a restocking charge upon the Customer.

27 TERMINATION

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27.1 Without limiting any other right or remedy available to ICR, ICR may terminate this Contract or suspend any further deliveries of Goods or supplies of Services governed by this Contract without liability to the Customer if:

- a) the Customer is in breach of a provision of this Contract; or
- b) the Customer has failed to pay any amount due under this Contract on the due date for payment;
- c) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer,
- d) the Customer ceases or threatens to cease to carry on business, or
- e) ICR reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and the Customer is notified accordingly.

27.2 If clause 27.1 applies and 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.

27.3 ICR may give written notice to the Customer to terminate this Contract forthwith for convenience and in such event the Customer will pay for all Goods supplied and work carried out up to the point of termination.

27.4 Where ICR gives written notice to the Customer to terminate this Contract, the Customer will immediately arrange for the return of any hired Goods to ICR.

28 CONFIDENTIAL INFORMATION

28.1 The information contained in the documents provided by ICR in connection with this Contract, including the Purchase Order, Quotation and these terms and conditions is confidential and may not be disclosed to others or used by the Customer for any other purpose than the performance of this Contract, without the prior written consent of ICR. No news release or advertisement of any kind relative to this Contract or the subject matter thereof shall be given to anyone without the prior written consent of ICR.

29 NOTICES

29.1 Any notice or other communication given to a Party under or in connection with this Contract shall be in writing and shall be delivered by hand or pre-paid first-class post or other next working day delivery service at its registered office.

29.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second business day after posting.

29.3 This clause 29 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

30 RIGHTS OF THIRD PARTIES

30.1 No provision of these conditions is enforceable under the terms of the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party hereto.

31 GOVERNING LAW & DISPUTE RESOLUTION

31.1 The law of Scotland shall apply to this Contract, and the Scottish courts shall have jurisdiction, subject to the Parties complying with clause 31.2.

30.1 Any dispute or differences of any kind whatsoever which shall arise between the Parties in connection with this Contract shall, if not settled by agreement between the Parties, be settled through Arbitration. The costs of such arbitration shall be shared equally between the Parties.

31.2 Notwithstanding any dispute or difference and unless this Contract is terminated, both Parties shall continue with the due performance of this Contract.

32 SURVIVING CLAUSES

32.1 The provision of this Contract relating to Confidential Information (clause 28), Warranties (clause 17), Indemnity Arrangements (Clause 19 and 21) and Governing Law and Dispute Resolution (clause 31) will survive its termination.

33 NON SOLICITATION OF STAFF

33.1 The Customer agrees that during the term of this Contract and for an additional period of six (6) months after termination or expiry, the Customer shall not directly or indirectly canvass with a view to offering or providing employment to, offer to contract with or entice to leave, any employee of or contractor to ICR engaged in the performance this Contract without ICR's prior written consent.

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