

Avoira terms and conditions of hire.



The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. Interpretation

1.1 The following definitions and rules of interpretation apply in this agreement.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: the date set out in the Particulars of Hire.

Damage Waiver: the charge set out in the Particulars of Hire (where applicable).

Delivery: the transfer of physical possession of the Equipment to the Hirer at the Site.

Deposit: the deposit amount set out in the Payment Schedule (where applicable) to be paid by the Hirer to the Owner in cash or cleared funds.

Equipment: the items of equipment listed in the Particulars of Hire, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Extended Term: the term set out in the Particulars of Hire.

Initial Term: the term set out in the Particulars of Hire.

Purchase Option: the Hirer's option to purchase the Equipment as more fully described in clause 9 (Purchase Option) (where applicable).

Purchase Option Price: the price of the Purchase Option as set out in the Payment Schedule (where applicable).

Site: the delivery address set out in the Particulars of Hire.

Rental Payments: the payments made by or on behalf of the Hirer for hire of the Equipment set out in the Particulars of Hire.

Rental Period: the period of hire as set out in clause 3 (Rental Period).

Total Loss: the Equipment is, in the Owner's reasonable opinion or the opinion of its insurers, damaged beyond repair, lost, stolen, seized or confiscated.

VAT: value added tax chargeable in the UK.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 The Particulars of Hire and Schedule form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Particulars of Hire and Schedule.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to writing or written includes e-mail but not fax.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.13 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Equipment Hire

2.1 The Owner shall hire the Equipment to the Hirer for use at the Site subject to the terms and conditions of this agreement.

2.2 The Owner shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with the Hirer's quiet possession of the Equipment.

3. Rental Period

The Rental Period starts on the Commencement Date and shall continue for the Initial Term unless this agreement is terminated earlier in accordance with its terms. In the event that the Equipment is not returned by the Hirer to the Owner at the end of the Initial Term, the Rental Period will continue for the Extended Term until the Equipment is returned by the Hirer to the Owner unless this agreement is terminated earlier in accordance with its terms.

4. Rental Payments and Deposit

4.1 The Hirer shall pay the Rental Payments to the Owner in accordance with the Particulars of Hire. The Rental Payments shall be paid in GBP and shall be made by direct debit.

4.2 In the event that any sums, in addition to Rental Payments, become payable under this agreement, the Owner shall invoice the Hirer for these sums and the Hirer shall make payment of this invoice within 30 days of the date of the invoice.

4.3 The Rental Payments and any other sums payable are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.

4.4 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4.5 If the Hirer fails to make a payment due to the Owner under this agreement by the due date, then, without limiting the Owner's remedies under clause 12 (Termination), the Hirer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

4.6 Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time.

4.7 Where applicable, the Deposit is a deposit against default by the Hirer of payment of any Rental Payments or any loss of or damage caused to the Equipment. The Hirer shall, on the date of this agreement, pay a deposit in the amount specified in the Particulars of Hire to the Owner. If the Hirer fails without due cause to make any Rental Payments in accordance with the Payment Schedule, or causes any loss or damage to the Equipment (in whole or in part), the Owner shall be entitled to apply the Deposit against such default, loss or damage. The Hirer shall pay to the Owner any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Rental Period.

5. Delivery and Installation

5.1 Delivery of the Equipment shall be made by the Owner unless agreed otherwise. The Owner shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. Title and risk shall transfer in accordance with clause 6 (Title, risk and insurance) of this agreement.

5.2 The Hirer shall procure that a duly authorised representative of the Hirer shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Hirer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Owner, the Hirer's duly authorised representative shall sign a receipt confirming such acceptance.

5.3 To facilitate Delivery and/or installation, the Hirer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and/or installation to be carried out safely and expeditiously.

6. Title, Risk and Insurance

6.1 The Equipment shall at all times remain the property of the Owner, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this agreement) except where the Hirer purchases the Equipment pursuant to the Purchase Option in clause 9 (Purchase Option).

6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery. The Equipment shall remain at the sole risk of the Hirer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Hirer (Risk Period) until such time as the Equipment is redelivered to the Owner. During the Rental Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:

- insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Owner may from time to time nominate in writing;
- insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Owner may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
- insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Owner may from time to time consider reasonably necessary and advise to the Hirer.

6.3 All insurance policies procured by the Hirer shall be endorsed to provide the Owner with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Owner's request name the Owner on the policies as a loss payee in relation to any claim relating to the Equipment. The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies.

6.4 The Hirer shall give immediate written notice to the Owner in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Hirer's possession or use of the Equipment.

6.5 If the Hirer fails to effect or maintain any of the insurances required under this agreement, the Owner shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.

6.6 The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Owner and proof of premium payment to the Owner to confirm the insurance arrangements.

7. Damage Waiver

7.1 Subject to clause 7.2, if the Hirer contracts to pay the Damage Waiver (where available as an option), the Owner will waive any further charge for rectifying accidentally damaged Equipment. Otherwise, this will be the Hirer's responsibility in accordance with this agreement.

7.2 Damage Waiver does not cover and the Hirer shall remain liable for:

- Any loss of Equipment; and
- Willful damage to Equipment.

- 7.3 The Hirer acknowledges that the Damage Waiver is not an insurance product for damage to Equipment or loss or theft.
- 8. Hirer's Responsibilities**
- 8.1 The Hirer shall during the term of this agreement:
- ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
 - take such steps (including compliance with all safety and usage instructions provided by the Owner) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work in accordance with any statutory obligations or otherwise;
 - maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) preserving any identification number or mark or any nameplate of the Owner or manufacturer on the Equipment and including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
 - make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Owner unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/ advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Owner immediately upon installation;
 - keep the Owner fully informed of all material matters relating to the Equipment;
 - keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without the Owner's prior written consent;
 - permit the Owner or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
 - maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Owner, together with such additional information as the Owner may reasonably require;
 - not, without the prior written consent of the Owner, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - not without the prior written consent of the Owner, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Hirer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Owner against all losses, costs or expenses incurred as a result of such affixation or removal;
 - not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Owner in the Equipment and, where the Equipment has become affixed to any land or building, the Hirer must take all necessary steps to ensure that the Owner may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Owner of any rights such person may have or acquire in the Equipment and a right for the Owner to enter onto such land or building to remove the Equipment;
 - not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Hirer shall notify the Owner and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Owner on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - not use the Equipment for any unlawful purpose;
 - ensure that at all times the Equipment remains identifiable as being the Owner's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
 - deliver up the Equipment at the end of the Rental Period or on earlier termination of this agreement at such address as the Owner requires, or if necessary allow the Owner or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment which needs to be easily accessed by road, manned at all hours and available during normal business hours of 9am-5pm Monday to Friday; and
 - not do or permit to be done anything which could invalidate the insurances referred to in clause 6 (Title, risk and insurance).
- 8.2 The Hirer acknowledges that the Owner shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Hirer or its officers, employees, agents and contractors or any third parties, and the Hirer undertakes to indemnify the Owner on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of this agreement.
- 8.3 The Hirer acknowledges that the continuity of this agreement shall be deemed not to be affected by and the Hirer shall not be entitled to any compensation or damages in respect of any part or all of the Equipment being put out of the possession or use of the Hirer for the purposes of maintenance, repair or replacement by the Owner as aforesaid for a period not exceeding five Business Days excluding transportation time.
- 9. Purchase Option**
- 9.1 Where specified in the Particulars of Hire, the Hirer shall, subject to clause 9.2, have the option, exercisable by not less than twenty (20) Business Days' written notice to the Owner, to purchase the Equipment on the last Business Day of the Rental Period at the Purchase Option Price.
- 9.2 The Purchase Option may be exercised only if all amounts due to the Owner under this agreement up to the date of exercise of the Purchase Option have been paid in full by the Hirer and the Equipment is to be used under the Hirer's licences and in compliance with applicable law.
- 9.3 Upon completion of the purchase of the Equipment under this clause 9, such title to the Equipment as the Owner had on the Commencement Date shall transfer to the Hirer. The Equipment shall transfer to the Hirer in the condition and at the location in which it is found on the date of transfer.
- 10. Warranty**
- 10.1 The Owner warrants that the Equipment shall substantially conform to its specification (as made available by the Owner), be of satisfactory quality and fit for any purpose held out by the Owner. The Owner shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within twelve (12) months from Delivery, provided that:
- the Hirer notifies the Owner of any defect in writing within ten (10) Business Days of the defect occurring or of becoming aware of the defect;
 - the Owner is permitted to make a full examination of the alleged defect;
 - the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Owner's authorised personnel;
 - the defect did not arise out of any information, design or any other assistance supplied or furnished by the Hirer or on its behalf; and
 - the defect is directly attributable to defective material, workmanship or design.
- 10.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Owner, the Hirer shall be entitled only to such warranty or other benefit as the Owner has received from the manufacturer.
- 10.3 The Owner specifically does not warrant the fitness or suitability of the Equipment or any unit thereof for the use thereof intended by the Hirer.
- 11. Liability**
- 11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Subject to clause 11.3, the Owner's total liability to the Hirer (including any liability for the acts or omissions of its employees, agents and subcontractors) shall not exceed the total sums paid for the individual piece of Equipment which is the subject of the claim.
- 11.3 Nothing in this agreement limits any liability which cannot legally be limited including but not limited to liability for:
- death or personal injury caused by negligence;
 - fraud or fraudulent misrepresentation; and
 - breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973.
- 11.4 This agreement sets forth the full extent of the Owner's obligations and liabilities in respect of the Equipment and its hiring and, where applicable, sale to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Owner except as specifically stated in this agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.
- 11.5 Subject to clause 11.3, neither party shall be liable under this agreement for any:
- loss of profit;
 - loss of revenue
 - loss of business; or
 - indirect or consequential loss or damage, in each case, however caused, even if foreseeable.
- 12. Termination**
- 12.1 Without affecting any other right or remedy available to it, the Owner may terminate this agreement with immediate effect by giving written notice to the Hirer if:
- the Hirer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;
 - the Hirer commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
 - the Hirer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
 - the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Hirer with one or more other companies or the solvent reconstruction of the Hirer;
 - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Hirer with one or more other companies or the solvent reconstruction of the Hirer;
 - an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Hirer (being a company);
 - the holder of a qualifying floating charge over the assets of the Hirer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over all or any of the assets of the Hirer or a receiver is appointed over all or any of the assets of the Hirer;
 - a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Hirer's assets and such attachment or process is not discharged within 14 days;
 - any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(d) to clause 12.1(j) (inclusive); or
 - the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.2 For the purposes of clause 12.1(b), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Owner would otherwise derive from:
- a substantial portion of this agreement; or
 - any of the obligations set out in clause 8, over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 12.3 This agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 13. Consequences of termination**
- 13.1 Upon termination of this agreement, however caused:
- the Owner's consent to the Hirer's possession of the Equipment shall terminate and the Owner may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
 - without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the Owner on demand:
 - all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.5;
 - any costs and expenses incurred by the Owner in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

- 13.2 Upon termination of this agreement pursuant to clause 12.1, any other repudiation of this agreement by the Hirer which is accepted by the Owner or pursuant to clause 12.3, without prejudice to any other rights or remedies of the Owner, the Hirer shall pay to the Owner on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period, less:
- a discount for accelerated payment at the percentage rate set out in the Payment Schedule; and
 - b. the Owner's reasonable assessment of the market value of the Equipment on sale.
- 13.3 The sums payable pursuant to clause 13.2 shall be agreed compensation for the Owner's loss and shall be payable in addition to the sums payable pursuant to clause 13.1(b). Such sums may be partly or wholly recovered from any Deposit.
- 13.4 Termination or expiry of this agreement 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 agreement which existed at or before the date of termination or expiry.
- 14. Force Majeure**
- Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.
- 15. Confidential Information**
- 15.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's confidential information:
- a. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
 - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.
- 16. Assignment and other dealings**
- This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 17. Entire Agreement**
- 17.1 This agreement 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.
- 17.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 18. Variation**
- No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19. No Partnership or Agency**
- 19.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 20. Counterparts**
- 20.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 21. Third Party Rights**
- 21.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 21.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.
- 22. Notices**
- 22.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- a. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - b. sent by email to the address specified in the Particulars of Hire.
- 22.2 Any notice or communication shall be deemed to have been received:
- a. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - b. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - c. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 22.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 22.4 A notice given under this agreement is not valid if sent by email.
- 23. Waiver**
- No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 24. Rights and Remedies**
- Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 25. Severance**
- 25.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 25.2 If any provision or part-provision of this agreement is deemed deleted under clause 25.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 26. Governing Law**
- This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 27. Jurisdiction**
- 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 agreement or its subject matter or formation.