

REAX Equipment Ltd - Hire Terms & Conditions

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 Goods/equipment;

“Customer” means any person, firm, company or other organisation hiring Hire Goods/equipment;

“Confirmation” means any document supplied by the Supplier to the Customer setting out the particulars of the Customer’s order (but not a mere acknowledgement of receipt of an order).

“Deposit” means any advance payment required by the Supplier in relation to the Hire Goods which is to be held as security by the Supplier;

“Force Majeure” means any event outside a 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 actions and any other similar events;

“Goods”, “Hire Goods” or “Equipment” means any machine, article, item, tool, and/or device together with any accessories specified in a Contract which are hired to the Customer;

“Hire Period” means the period commencing when the Customer holds the Hire Goods on hire (including Saturdays Sundays and Bank Holidays) and ending upon the physical return of the Hire Goods by the Customer into the Supplier’s possession by tracked delivery or delivery in person.

“Liability” means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;

“Rental” means the Supplier’s charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period;

“Supplier” means **REAX Equipment Ltd** (herein referred to as REAX or Supplier) a company registered in England and Wales with company number 11576372 (VAT number GB 307530624). Registered office: Unit 3, Keystone Court Hallam Way, Whitehills Business Park Blackpool Lancashire FY4 5NZ United Kingdom, 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 for the Customer in conjunction with the hire of Goods including any arranged delivery and/or collection service, repairs, replacement of damaged parts/components, and any servicing required at end of hire agreement in respect of the Hire Goods.

1.2 These terms and conditions shall not be amended without the prior written agreement of a director of the Supplier.

1.3 The Supplier will not be bound by any change purported to be made to these terms and conditions by any of the Supplier’s staff unless a director of the Supplier confirms in writing that the change is agreed (this paragraph does not apply to Consumers).

1.4 Furthermore if there is any inconsistency between these terms and conditions on the one hand and any other documentation or information provided to the Customer, then to the extent of any conflict (except for details of price, payment, Hire Period or delivery in any Confirmation), these terms and conditions will prevail.

2. BASIS OF CONTRACT

2.1 Goods are hired subject to them 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 Goods being unavailable for hire. Availability of Hire Goods must be established with the Supplier in advance of any order request.

2.2 If the duration of Hire Period exceeds the period initially indicated and agreed, the Supplier cannot guarantee that the hire goods next inspection will not be due to take place. If the hire period is extended, the Customer may be required to return the hire goods for inspection at their own expense.

3. FAULTY GOODS AND/OR SERVICES

3.1 It is the responsibility of the Customer to make the Supplier aware of any faults as soon as the Customer becomes aware of them. The Customer should cease using the Hire Goods/Equipment with immediate effect until a solution/replacement can be arranged by the Supplier.

4. PAYMENT

4.1 The amount of any Rental and/or charges shall be as quoted to the Customer by the Supplier. The Supplier reserves the right to also require an initial payment on account of the Rental in advance of the Customer hiring the Hire Goods (subject to agreement and this will be included in the quote).

4.2 The Customer shall pay the Rental and charges for any Services and/or any other sums payable under the Contract to the Supplier in accordance with the Supplier's standard payment terms which are as follows:

- i. For hire periods of 4 weeks or less – full payment is required in advance of delivery of the hire goods to the Customer.
- ii. When the hire period is more than 4 weeks, (unless otherwise agreed in writing) the first 4 weeks must be paid in advance of delivery of the hire goods to the Customer. Further 'days' hire after the initial first 4 weeks will be invoiced by the Supplier at End of Month where additional days hire has occurred or at the end of the hire agreement when hire goods are returned to the Supplier (whichever occurs first).

If no monthly credit terms have been agreed by the Supplier, then the Supplier's invoices are due for payment when an order for the Goods and/or Services is placed or, if agreed in advance by the Supplier, when the Goods and/or Services are delivered or supplied.

4.3 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 cleared funds in respect of the full amount outstanding.

4.4 If the Customer fails to make any payment in full on the due date:

4.4.1 the Supplier may charge the Customer interest (both before and after judgment/decreed) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 ("1998 Act")(where applicable) or at the rate of 4% above the base rate from time to time of the Supplier's bank whichever is higher;

4.4.2 All sums payable under the Contract, and under any other contract between the Supplier and the Customer, shall immediately become due and payable;

4.4.3 Regardless of whether or not the Supplier is claiming interest under the 1998 Act the Supplier shall be entitled to recover all sums which it would have been entitled to recover under the 1998 Act if it had charged

interest under the 1998 Act. Such sums shall include the compensation charges referred to in clause 5A of the 1998 Act, (the amount of compensation being determined in accordance with the principles set out in the 1998 Act).

4.5 The Customer shall be deemed to have accepted the Rental due as set out on an invoice unless it informs the Supplier within 14 days of the date of the invoice that it disputes the invoice.

4.6 The Customer shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

4.7 The Supplier may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend the Contract for hire of the Hire Goods and/or the provision of Services if allowing it to continue would result in the Customer exceeding its credit limit or if the credit limit is already exceeded. The Supplier may, in its absolute discretion, reduce the Customer's credit limit.

5. RISK AND OWNERSHIP

5.1 Risk in the Goods will pass immediately to the Customer when they leave the physical possession or control of the Supplier.

5.2 Risk in the Hire Goods will not pass back to the Supplier from the Customer until the Hire Goods are back in the physical possession of the Supplier. This shall apply even if the Supplier has agreed to cease charging the Rental, the Hire Period has ceased, or if the Contract has expired or terminated.

5.3 Ownership of the Hire Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer.

5.4 The Customer must not deal with the ownership or any interest in the Hire Goods. 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. However, the Customer may re-hire the Hire Goods to a third party with the prior written consent of the Supplier.

6. DELIVERY, COLLECTION AND SERVICES

6.1 The Customer may collect the Hire Goods themselves directly from the Supplier if arranged. Shipping costs for delivery of the Hire Goods to the Customer as required will be paid by the Customer and included on the invoice.

6.2 It is the responsibility of the Customer to return the Hire Goods to the Supplier at the end of the Hire Period (or for annual servicing as stated in clause 2.2) via secure tracked shipping method or by delivering them in person.

6.3 If any Services/Hire of Goods are delayed, postponed, aborted and/or are cancelled due to the Customer failing to comply with its obligations herein the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement, aborted delivery and/or cancellation except where the delay is due to a Force Majeure event.

7. CARE OF HIRE GOODS

7.1 The Customer shall:

7.1.1 not remove any labels from and/or interfere with the Hire Goods, their working mechanisms or any other parts of them and shall take reasonable care of the Hire Goods 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;

7.1.2 notify the Supplier immediately after any breakdown, loss and/or damage to the Hire Goods;

7.1.3 take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks whilst ensuring they are kept in clean/dry storage;

7.1.4 notify the Supplier of any change of its address and upon the Supplier's request provide details of the location of the Hire Goods;

7.1.5 keep the Hire Goods at all times in its possession and control and not to remove the Hire Goods from the country where the Customer is located and/or the country where the Supplier is located without the prior written consent of the Supplier;

7.1.6 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hire Goods required by any legislation, best practice and/or operating instructions except to the extent that the Supplier has agreed to provide them as part of any Services;

7.1.7 not continue to use Hire Goods where they have been damaged and will notify the Supplier immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person; and

7.1.8 ensure that any employees, agents or contractors that operate the Hire Goods are a 'Competent Person' and/or, if applicable, adequately and sufficiently qualified and trained to operate the Hire Goods in accordance with all current and applicable legislation. It is the expectation of the Supplier that any person using the Hire Goods/Equipment will be suitably trained to do so. If training is required, please contact REAX to arrange this in advance of receiving the Hire Goods on Tel: 01253 767775.

7.2 The Hire Goods must be returned by the Customer in good working order and condition and in the same condition that they were in prior to the hire.

7.3 Where the Hire Goods are Milan Rescue Kits the following additional conditions apply:

- i. The Supplier will inspect the Milan Rescue Kit on its return to establish if it remains in the condition that it was provided to the Customer.
- ii. If the Milan Rescue Kit is found to have been opened (breaking of sealed tags), a Level 2 Service will be required when the unit is returned to REAX at an additional cost to the Customer.
- iii. If the Milan Rescue Kit is found to have been opened (the seal is broken on the internal foil bag) and has damage, signs of use, missing parts, damaged seal box/bag or any other changes, a Level 3 Service will be required when the unit is returned to REAX at an additional cost to the Customer.
- iv. If the Milan Rescue Kit is found to have been opened and has damage, signs of use, missing parts, damaged seal box/bag or any other changes and is found to be beyond the repair of a Level 3 Service, the Customer will pay to the Supplier the current market value replacement cost for any Hire Goods. The Current Market Value of the unit will be provided at the start of hire.

8. REPAIRS & ALTERATIONS

8.1 The Customer must not repair or attempt to repair or alter the Hire Goods in any way. If any repair is attempted this would constitute damage/loss of the item and the clauses in section 9 would apply.

9. LOSS OR DAMAGE TO THE HIRE GOODS

9.1 If the Hire Goods are returned in damaged, unclean and/or defective state (except where due to fair wear and tear and/or an inherent fault in the Hire Goods), the Customer shall be liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire, in accordance with all the provisions of clause 7, and to pay the Rental, until such repairs, service and/or cleaning have been completed.

9.2 In respect of any Hire Goods which are lost, stolen or damaged beyond economic repair during the Hire Period the Customer will pay to the Supplier the full replacement costs of any Hire Goods (including shipping, loss of revenue and cost of goods). The value of the hire equipment will be listed on the invoice so that the Customer is aware of this potential cost should the hire goods be lost, stolen or damaged beyond economic repair.

9.3 The Customer shall remain liable to pay the Rental for the Hire Goods up to and including the date it notifies the Supplier that the Hire Goods have been lost, stolen and/or damaged beyond economic repair and agrees to the pay the Supplier as per clause 9.2.

9.4 In addition to the obligation in clause 9.3 to pay the Rental, from the date the Customer notifies the Supplier that the Hire Goods have been lost, stolen and/or damaged beyond economic repair until the date the Customer makes a payment to the Supplier for the replacement of the Hire Goods in accordance with clause 9.2 ("Lost Rental Period"), the Customer shall pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages being equal to two thirds of the Rental that would have applied for such Hire Goods during the Lost Rental Period. The Supplier shall use its reasonable commercial endeavours to purchase replacements for such Hire Goods as quickly as possible once it has received payment from the Customer under clause 9.2 above.

9.5 In the case of Milan Rescue kits, please refer to clause 7.3 for additional costs that the Customer will be liable for in the event of the Rescue Kit being opened/used.

10. PRICES/HIRE RATES

10.1 Prices for hire periods will be stated in 'days' of hire and will include weekend and bank holidays (unless stated otherwise by the Supplier in writing).

10.2 The Hire Period will commence on the date that the Hire Goods/Equipment arrives with the Customer (unless an alternative date has been agreed in writing by the Supplier. The Hire period will end on the date of the physical return of the Hire Goods/equipment by the Customer into the Supplier's possession by tracked delivery or delivery in person.

10.3 The Supplier's prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable. However, if the rate of VAT changes between the date of the order and the date of delivery, the Supplier will, if permitted by law, adjust the VAT the Customer pays, unless the Customer has already paid for the Goods in full before the change in VAT takes effect.

11. TERMINATION BY NOTICE

11.1 If the Hire Period has a fixed duration, then subject to the provisions of clause 12 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.

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

11.3 On fixed or non-fixed hire duration, the customer may terminate the hire of the Hire Goods by giving not less than 14 days' notice to the Supplier and the customer must return the goods at their own expense within this period.

12. DEFAULT

12.1 If the Customer:-

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

12.1.2 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;

12.1.3 persistently breaches the terms of the Contract;

12.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

12.1.5 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;

12.1.6 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 order/arrestment 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;

12.1.7 appears to the Supplier (acting reasonably) due to the Customer's credit rating to be financially incapable of meeting its obligations under the Contract;

12.1.8 appears to the Supplier (acting reasonably) to be about to suffer any of the above events; and/or

12.1.9 fails to return to the Supplier the Hire Goods by the due date for return, 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 12.2.

12.2 If any of the events set out in clause 12.1 above occurs in relation to the Customer then:-

12.2.1 the Supplier may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with the Customer;

12.2.2 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

12.2.3 all monies owed by the Customer to the Supplier shall immediately become due and payable.

12.3 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 which occurred prior to repossession of the Goods.

12.4 The Supplier may recover the costs, including but not limited to the costs of replacement, in respect of lost or damaged Goods, and nothing in clauses 12.2-12.4 shall limit the Supplier's right to recover such costs. The Supplier may recover the costs, including but not limited to the costs of replacement and recovery, in

respect of Goods which the Supplier has been unable to collect because they have not been made available for collection by the Customer in breach of this agreement, and nothing in clauses 12.2-12.3 shall limit the Supplier's right to recover such costs.

12.5 Upon termination of the Contract the Customer shall immediately:-

12.5.1 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 (and the provisions of clauses 12.2 to 12.4 in respect of access to premises for this purposes shall apply); and

12.5.2 pay to the Supplier all arrears for Rentals, charges for any Services, monies for any Goods and/or any other sums payable under the Contract including, but not limited to, the cost of returning the Goods.

13. LIMITATIONS OF LIABILITY

13.1 When delivered, the Goods will conform in all material respects with their description, be of satisfactory quality, and be reasonably fit for the purposes for which products of that kind are commonly supplied.

13.2 Any defective Goods must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any Liability for defective Goods.

13.3 The Supplier shall have no Liability to the Customer if, without just cause, any monies due in respect of the Goods and/or the Services have not been paid in full by the due date for payment. The Customer's remedy for any breach of any of the warranties or representations set out in the Contract (whether made innocently or negligently) by the Supplier is limited to breach of contract.

13.4 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 and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.

13.5 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.

13.6 The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier. The Customer remains liable for the Goods notwithstanding that the Supplier or Customer has insurance in place which would indemnify either the Supplier or the Customer.

13.7 The Supplier shall have no Liability to the Customer for any of the following losses (whether direct or indirect):-

13.7.1 Consequential losses;

13.7.2 Loss of profits;

13.7.3 Loss of income;

13.7.4 Economic and/or similar losses;

13.7.5 Loss of anticipated savings;

13.7.6 Loss of data;

13.7.7 wasted management or office time;

13.7.8 Business interruption, loss of business, contracts and/or opportunity including loss of profits and/or damage to goodwill;

13.7.9 Special damages and indirect losses however so arising; and/or

13.7.10 loss resulting from any inability to carry out any operations. For example, the Supplier shall not have any Liability if the Customer cannot complete a task because the Supplier supplied the wrong Goods.

13.8 The Supplier's total Liability to the Customer under and/or arising in relation to any Contract shall not exceed 5 times the amount of the Rental, in addition to charges for Services (if any) under that Contract or the sum of £1,000 (or Euro equivalent) whichever is the higher. To the extent that any Liability of the Supplier to the Customer would be met by any insurance of the Supplier then the Liability of the Supplier shall be extended to the extent that such Liability is met by such insurance.

13.9 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:-

13.9.1 Liability for breach of contract;

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

13.9.3 Liability for breach of statutory and/or common law duty;

Except clause 13.9 above which shall apply once only in respect of all the said types of Liability.

13.10 Regardless of anything else in the Contract, nothing in the Contract restricts the Supplier's Liability for (a) death or personal injury resulting from negligence for which it is responsible; (b) fraud; (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979; (d) defective products under the Consumer Protection Act 1987 (to the extent that this liability cannot be excluded); or (e) any other matter to the extent that it cannot be excluded or limited by law.

14. GENERAL

14.1 Upon termination of the Contract the provisions of clauses 4.2, 4.4, 4.6, 7, 8, 9.1 and 9.3 shall continue in full force and effect.

14.2 Each hire of an item of Hire Goods shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Goods.

14.3 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.

14.4 If the Customer has any questions or complaints it may contact the Supplier by telephoning 01253 767775 (opt 3) or by e-mail at equipment@reaxltd.com.

14.5 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/delictual act and/or omission and/or any breach of statutory duty by the Customer.

14.6 The Supplier may source Hired Goods from a third party. The Customer shall indemnify the Supplier against any Liability arising out of, or connected to, any claim brought by that third party, save to the extent that the Liability was a result of the Supplier's breach of the Contract or negligence.

14.7 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 provision is held by any competent authority to be unenforceable in whole or in part 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.

14.8 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.

14.9 All third party rights are excluded and no third parties shall have any rights to enforce the Contract by 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 this Contract as if they were the Supplier.

14.10 The Supplier may transfer, assign, charge, or otherwise dispose of a Contract, or any of its rights or obligations arising under it, at any time during the term of the Contract.

14.11 The Supplier may subcontract its obligations under the Contract but the Supplier shall remain liable for the performance of its obligations to the same extent as it would have been but for the subcontracting.

14.12 These terms and conditions and any Confirmation constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.13 each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the terms and conditions or any Confirmation. Each party agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misstatement, based on any statement in this agreement.

14.14 This Contract is governed by 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.

14.15 The Supplier undertakes to supply only safety equipment and/or related services that fully comply with the standards and regulations and claims made relating to those products and/or related services. Where appropriate, the Supplier will maintain up to date technical files and associated documentation to ensure that regulatory compliance information can be supplied upon request. Where products are sourced from external organisations, those external organisations may hold technical files relating to the products being offered.