

# MEASUREMENT DEVICES LIMITED

## ("MDL")

### TERMS AND CONDITIONS OF HIRE

#### 1. Definitions

In these terms and conditions the following words and expressions shall have the following meanings: -

##### "MDL"

means Measurement Devices Limited, a company registered in Scotland, number 84301 whose registered office is at Silverburn Crescent, Bridge of Don Industrial Estate, Aberdeen, AB23 8EW;

##### "the Customer"

means the company, corporation, firm, person or body who is hiring the Equipment pursuant to the Contract;

##### "the Contract"

means the contract between MDL and the Customer for the hire of the Equipment evidenced by a Quotation or an Order and acceptance by MDL (as the case may be) and including these terms and conditions;

##### "the Equipment"

means the equipment hired by MDL to the Customer under the Contract as detailed therein;

##### "an Order"

means an order of the Customer; and

##### "a Quotation"

means a quotation of MDL.

#### 2. General

2.1 MDL agrees to hire the Equipment in accordance with the Contract.

2.2 All Quotations and the acceptance by MDL of any Order is on the understanding that the Customer accepts these terms and conditions. These terms and conditions shall form the basis of the Contract notwithstanding anything to the contrary in any other terms and conditions of or referred to by the Customer and may only be varied in writing by an authorised representative of MDL.

2.3 Subject to clause 2.2 hereof, no employee, agent or other representative of MDL shall be empowered to waive the rights of MDL hereunder or vary these terms and conditions orally or otherwise.

2.4 Orders whether received as a result of a Quotation or otherwise are subject to acceptance by MDL in writing.

#### 3. Hire of Equipment

3.1 The period of hire shall commence from the time and date when the Equipment is delivered in accordance with clause 4.1 and shall terminate when the Equipment is returned to MDL's premises.

##### 3.2 Hire Charges

(a) Hire charges shall be at the rates shown in MDL's equipment hire list. MDL reserves the right to alter the hire charge for Equipment already on hire by written notice to the Customer;

(b) There is a minimum hire charge of Fifty Pounds Sterling;

(c) Quotations are subject to confirmation upon receipt of an Order and MDL reserves the right to amend any accidental errors and/or omissions on Quotations or invoices;

(d) Hire charges are at the discretion of MDL. MDL will not, however, alter the hire charge quoted on a Quotation provided that an Order is received within thirty (30) days from the date of Quotation, unless MDL has specified in writing to the contrary;

(e) MDL reserves the right to revise hire charges where conditions change between the date of Quotation and the date of delivery;

(f) Hire charges quoted shall not include Value Added Tax which shall be charged at the rate in operation at the relevant tax point date, or any other taxes or duties or delivery which shall be charged in addition; and

(g) The Customer waives any and all existing and future claims and rights of set-off against hire charges or other payment (including interest) due hereunder and agrees to pay the hire charges and any other amounts payable hereunder regardless of any set-off or cross claim on the part of the Customer against MDL.

##### 3.3 Ownership

The Equipment shall remain the property of MDL and is provided to the Customer solely on a rental basis.

#### 3.4 Customer's Obligations

During the continuance of the Contract the Customer shall:

(a) keep the Equipment at the delivery address as specified in the Contract and in its own possession and not remove the same from such address without first giving written notice to MDL of its destination and in any event, not allow the Equipment to be transferred to any country prohibited by the Department of Trade and Industry or the US Bureau of Foreign Commerce;

(b) permit an authorised representative of MDL at all reasonable times to enter upon premises or any vessel where the Equipment is located for the purposes of inspection, maintenance, repair or testing;

(c) not subject the Equipment to any misuse or unfair wear and tear and shall ensure that the Equipment is operated in a skilful and proper manner and by persons who are competent to operate same;

(d) keep the Equipment in the same condition as at the commencement of the period of hire, fair wear and tear only excepted, and shall pay to MDL the full cost of all loss or damage to the Equipment howsoever caused;

(e) take all necessary steps to ensure that the Equipment will be safe and without risks to health and safety when properly used by it;

(f) preserve on the Equipment MDL's and any manufacturer's identification number or mark or any nameplate that is or should be upon the Equipment;

(g) not make any alterations, modifications or technical adjustments or do or attempt any repairs to the Equipment;

(h) arrange and maintain at its expense adequate insurance for the full replacement value of the Equipment. Such insurance shall cover all loss and damage to the Equipment and also all risks to third parties in connection therewith. Such insurance shall commence from the time and date of delivery for the period of hire up to and including the date when the Equipment is delivered back to and received by MDL and acknowledged by it in writing. MDL may at any time demand evidence that such cover exists. Failure to produce such evidence within twenty-four (24) hours will constitute a material breach of the Contract;

(i) notify MDL forthwith in writing of any loss, damage or claim relating to the Equipment and within fourteen (14) days of demand, reimburse MDL the full cost of repair or replacement. Where the Equipment is lost, the hire charge shall continue until the full cost of replacement is received by MDL. Where the Equipment is damaged, the hire charge will continue until the Equipment is returned to MDL. In either event the Customer shall also reimburse MDL upon demand for any loss of hire charges suffered by MDL;

(j) in connection with the use or operation of the Equipment, indemnify and hold harmless and defend MDL and its officers, employees and agents against all liabilities, actions, legal or administrative proceedings, claims and expenses of whatever nature arising by reason of (a) death of or illness or injury to any third party or loss of or damage to any third party's property and (b) death of or illness or injury to persons employed by the Customer or loss of or damage to the property of the Customer;

(k) not sell, assign, sub rent, transfer or charge the Equipment or any part thereof nor the benefit of the Contract or part with possession of the Equipment or any part thereof at any time during the period of hire;

(l) repay MDL on demand all costs, charges and expenses incurred in any way by reason of its breach of any of these terms and conditions including but not limited to all costs, charges and expenses incurred in ascertaining the location of the Equipment;

(m) not by any act or default render the Equipment liable to any diligence, execution or other legal process or suffer the appointment or presentation of a petition for the appointment of an Administrator under the provisions of Part II of the Insolvency Act 1986;

(n) punctually pay all duties and taxes concerning the Equipment; and

(o) upon expiry of the period of hire, return the Equipment at its expense to MDL unencumbered and in the same condition as delivered, fair wear and tear excepted.

#### 3.5 Cancellation

The Customer shall not cancel the Contract or any part thereof prior to commencement of the hire of the Equipment unless MDL gives prior written consent and on terms which indemnify MDL against all loss.

#### 3.6 Maintenance

The Customer shall notify MDL if any maintenance of the Equipment is required. The Customer shall not undertake any maintenance without first obtaining MDL's written consent in respect thereof. Subject as aforesaid, all maintenance and all repairs shall be undertaken by MDL provided that the Customer at its expense returns the Equipment to MDL.

#### 4. Risk and Delivery

4.1 Delivery shall be deemed to take place when the Equipment leaves MDL's premises and is placed in transit to the Customer when the whole risk shall pass to the Customer. Where MDL arranges carriage of the Equipment, it is the Customer's responsibility to arrange appropriate insurance cover for the protection of the Equipment until such time as the Equipment has been delivered to the Customer and returned to MDL premises. Where MDL arranges carriage, claims in respect of loss of or damage to the Equipment in transit must be intimated by notice in writing to the carrier within five (5) days and to MDL within ten (10) days of delivery. Non delivery must be notified to the carrier and to MDL within ten (10) days from the invoice date.

4.2 Where a Quotation is accepted by the Customer within the time specified by MDL for such acceptance, MDL shall endeavour to adhere to delivery dates but time shall not be deemed to be of the essence and MDL shall not be liable for any loss, damage or claim occasioned by or consequential on the non-delivery on the expected date or for delayed delivery. Deliveries offered ex-stock are subject to the Equipment being available at the date of receipt of the Order. In case of unforeseen delay in delivery, MDL will notify the Customer as soon as reasonably practicable.

#### 5. Carriage

In addition to hire charges MDL may make a separate charge for outward delivery and/or collection. MDL's packaging materials are chargeable in full if not returned in reasonable condition upon completion of hire. All carriage and packing charges will be invoiced at cost plus ten (10) per cent unless agreed in writing to the contrary.

#### 6. Commissioning/Training

Hire charges do not include mobilisation nor time spent by MDL personnel commissioning the Equipment and training the Customer's personnel. Should commissioning and/or training be required there will be an additional charge, plus travel and living expenses where appropriate, at cost plus ten (10) per cent where applicable.

#### 7. Payment

7.1 All invoices for hire charges are payable within thirty (30) days of the invoice date. Hire charges are net and no deduction or settlement discounts are allowed. MDL may charge and the Customer shall pay interest on any overdue payment at a rate of four (4) per cent per annum above the base rate from time to time of Clydesdale Bank plc.

7.2 MDL may in appropriate circumstances require a deposit or payment in advance ("the Deposit"). In the event the Deposit is taken, the Deposit shall be held in MDL's sole name and MDL shall not be bound to account to the Customer for any interest on the Deposit.

#### 8. Defects and Liability

8.1 The Customer shall notify MDL of any defects in the Equipment within twenty-four (24) hours of receipt by it. Failing such notification, it shall be conclusively presumed as between MDL and the

Customer that the Equipment has been received in good condition and in every way satisfactory for the Customer's purposes. MDL does not give any warranty as to the quality of the Equipment nor as to its fitness for the purposes of the Customer. MDL does not warrant that the Equipment corresponds with any description or specifications either contained in catalogues or given verbally. MDL accepts no responsibility whatsoever (except such as cannot by law be excluded) for any claims of any kind resulting from the use, nature or condition of the Equipment during the period of hire irrespective of negligence on the part of MDL. MDL shall in no circumstances be responsible for any loss of use, loss of profits or any consequential loss of any kind suffered by the Customer or any other party in any way connected with the Contract as a result of the use, nature or condition of the Equipment.

8.2 The liability of MDL including that for breach of contract, negligence, strict liability, in delict or otherwise for the Equipment and the Customer's remedy in respect thereof shall be limited to MDL repairing or replacing the Equipment or any part thereof (excluding installation), provided that the Equipment or any part thereof is returned by the Customer at its expense to MDL's premises for inspection and provided further that such of the Equipment or any part thereof is accepted by MDL as defective from the time of delivery. Under no circumstances shall MDL's liability exceed the aggregate of MDL's hire charges for such Equipment.

#### 9. Force Majeure

MDL shall not be liable to the Customer for any loss, damage or claim suffered by the Customer directly or indirectly as a result of MDL's failure or delay in performing any of its obligations under these terms and conditions where such failure or delay is caused by any occurrence beyond the reasonable control of MDL.

#### 10. Termination of the Contract

If the Customer shall make default in payment, or commit any other breach of the Contract or if any diligence or execution shall be levied upon the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition with creditors or become apparently insolvent or commit any act of bankruptcy, or if any petition of bankruptcy shall be presented or made against him or her, or, if the Customer is a limited company, a resolution or petition to wind up such company, (other than for the purposes of amalgamation or reconstruction) shall be passed or presented or if a liquidator or receiver or administrator of such company's undertaking property, assets or any part thereof shall be appointed, MDL shall have the immediate right to terminate the Contract and to declare all sums due and to become due hereunder for the full term of the rental period immediately due and payable. MDL may demand that the Customer returns all Equipment in the same condition as delivered, fair wear and tear excepted, at the Customer's risk and expense to such locations as MDL may designate. MDL may enter upon any premises where the Equipment is located and take immediate possession of and remove the same, all without court order or other process of law and all without any liability but without prejudice to all rights or remedies available to MDL in respect of the non-payment or any other breach of the Contract by the Customer.

#### 11. Severance

If any provision is or becomes illegal, invalid or unenforceable in any respect, the remaining provisions hereof shall in no way be affected or impaired thereby.

#### 12. Waiver

No waiver by MDL of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions.

#### 13. Headings

The headings in these terms and conditions are inserted for convenience only and shall not affect the construction hereof.

#### 14. Notices

Any notice required to be given hereunder shall be in writing addressed to the other party and sent to its registered office or principal place of business or such other address as may have from time to time been notified for this purpose.

#### 15. Arbitration

15.1 Any dispute or difference arising out of or relating to the Contract, the interpretation or the breach thereof, shall be settled by arbitration before an arbitrator selected and appointed by the President or Vice-President for the time being of the Law

Society of Scotland from the panel of arbitrators maintained by the Law Society of Scotland and conducted in accordance with the arbitration rules of the Law Society of Scotland current at the date of the appointment of the arbitrator.

15.2 Subject to Clause 15.1 hereof these terms and conditions and the Contract shall be governed and construed in accordance with the laws of Scotland and the Customer submits to the jurisdiction of the Scottish courts in so far as not already subject thereto.