

TERMS AND CONDITIONS FOR SUPPLY OF HIRE EQUIPMENT SERVICES
PLEASE NOTE THAT THESE TERMS ARE USED WITH TRADERS AND WITH CONSUMERS AND IN CERTAIN AREAS
DIFFERENT PROVISIONS APPLY TO EACH AS FOLLOWS:

Part A: General Terms and Conditions applying to Traders and Consumers;

Part B: Terms applying only to Consumers; and

Part C: Substitute and Supplemental Terms applying only to Traders.

A "Trader" means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.

A "Consumer" means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession.

BEFORE PLACING AN ORDER, THE HIRER SHOULD READ THESE TERMS AND CONDITIONS CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION ABOUT THE ORDER.

WHERE THE HIRER IS A CONSUMER, THE HIRER'S ATTENTION IS DRAWN IN PARTICULAR TO THE SECTIONS CONCERNING COLEMAN PLANT HIRE LTD' LIABILITY TO THE HIRER AND CANCELLATION SET OUT IN PART B.

PART A

GENERAL TERMS AND CONDITIONS APPLYING TO TRADERS AND CONSUMERS

1. Definitions

1.1 In each Contract, the following words and expressions shall, unless the context or circumstances require otherwise, have the meanings assigned to them below:

"Account" means the account in the name of the Hirer under which the Hirer can order the provision of Services;

"Additional Charges" means charges applicable to the provision of the Services which are charged in addition to the Charges including, as applicable, delivery costs, costs incurred in failed deliveries or collections, fuel, insurance charges, charges in respect of Damage Waiver and Damage Waiver Plus and any other additional costs and expenses referred to in these Terms and Conditions;

"Business Day" means a day (other than a Saturday, Sunday or public or bank holiday) on which the banks are ordinarily open for business in the City of London;

"Cancellation Clause" means clause B 4.1, B 4.5 or B 6.2 in the case of Consumer Hirers or clause C 6. in the case of Trader Hirers;

"Cancellation Date" means the date on which the Contract expires or is cancelled for whatever reason;

"Charges" means the charges set out in the Contract or if no charges are detailed in the Contract, COLEMAN PLANT HIRE LTD standard charges for the relevant Services in force from time to time;

"Commencement Date" means the earlier of the date set out in the Contract, the date of the creation of an Account, if applicable or where no such dates apply, the day on which the hire of the Equipment commences under the Contract;

"Contract" means the contract for Services between COLEMAN PLANT HIRE LTD and the Hirer created in accordance with clause 3.1;

"Damage Waiver" means the optional waiver of liability for payment by the Hirer for damage to Equipment as set out in clause 9;

"Damage Waiver Plus" means the optional waiver of liability for payment by the Hirer for loss or damage to Equipment as set out in clause 9;

"Equipment" means the items of equipment to be hired by the Hirer as listed in the Order, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it to be supplied as part of the Services;

"Event Outside COLEMAN PLANT HIRE LTD' Control" means any act or event beyond COLEMAN PLANT HIRE LTD' reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

"Group" means in respect of a party, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time ("Parent Undertaking" and "Subsidiary Undertaking" having the meanings set out in section 1162 Companies Act 2006).

"Hire Period" means the period of hire of the Equipment in respect of each Contract as set out in the Order if not cancelled earlier in accordance with the applicable Cancellation Clause;

"Hirer" means the Consumer or Trader set out as such in the Contract;

"COLEMAN PLANT HIRE LTD" means the relevant COLEMAN PLANT HIRE LTD company set out in the Contract;

"Order" means the individual orders for the hire of Equipment placed by the Hirer from time to time during the Term in accordance with clause 4;

"Order Acknowledgement" COLEMAN PLANT HIRE LTD' written acceptance of the Order;

"Replacement Cost" means the cost of replacing any item of Equipment or part of it including but not limited to the cost of the item or part of it, any unpaid Charges that would otherwise have been paid by the Hirer were it not for such replacement, and a reasonable administrative charge to be determined by COLEMAN PLANT HIRE LTD covering the cost to COLEMAN PLANT HIRE LTD of administering the replacement, notified to the Hirer at the point of hire;

"Services" means the hire of Equipment by COLEMAN PLANT HIRE LTD to the Hirer;

"Site" means the Hirer's primary business premises unless specified otherwise in the Contract or in an Order or any other premises at which the Equipment is located;

"Term" has the meaning given to it in clause 3.2;

"Terms and Conditions" means these terms and conditions that apply to an individual Order;

"Working Hours" are from 7.30 am to 5.30 pm on a Business Day unless specified otherwise in writing by COLEMAN PLANT HIRE LTD.

1.2 unless the context otherwise requires:

(a) references to the singular include the plural and vice versa and references to any gender include every gender;

(b) references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

(c) references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;

(d) an obligation on a party to procure or ensure the performance or standing of another person shall be construed as a primary obligation of that party;

(e) in the event that there is a conflict between Part A, Part B and Part C, Part A shall prevail and then Part B in the case of a Consumer and Part C in the case of a Trader; and

(f) any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

2. Information about COLEMAN PLANT HIRE LTD and contacting COLEMAN PLANT HIRE LTD

2.1 The name, company registration number, registered office address and VAT number of the relevant COLEMAN PLANT HIRE LTD company from which the Equipment will be hired is set out on the Contract.

2.2 If the Hirer has any questions or if the Hirer has any complaints, please contact COLEMAN PLANT HIRE LTD. COLEMAN PLANT HIRE LTD can be contacted by telephone on 01424 234534 or by emailing info@colemanplanthireltd.com.

3. Formation of Contract and Commencement

3.1 The signature by both parties of a written agreement which these Terms and Conditions are attached or which refer to these Terms and Conditions or, if no written agreement has been entered into, the creation of an Account (in the case of a Trader) or the placing of an Order by the Hirer and the acceptance of such Order by COLEMAN PLANT HIRE LTD in accordance with clause 4.2, shall form the basis of the Contract incorporating these Terms and Conditions.

3.2 The Contract shall commence on the Commencement Date and shall continue until the Cancellation Date (unless cancelled early in accordance with the applicable Cancellation Clause) or if no period is set out in the Contract until the Contract is cancelled in accordance with the relevant Cancellation Clause ("Term").

4. Orders

4.1 Each Order placed by the Hirer during the Term will be an offer by the Hirer to purchase the Services on these Terms and Conditions.

4.2 A Contract will be formed between COLEMAN PLANT HIRE LTD and the Hirer for the provision of Services set out in the Order, when COLEMAN PLANT HIRE LTD confirm their acceptance of the Order by issuing an Order Acknowledgement to the Hirer.

4.3 The placing of any Order and/or the acceptance of delivery of the Equipment shall be conclusive evidence of the Hirer's acceptance of these Terms and Conditions. Any addition or amendment to any Order will create a new Order.

4.4 The Contract shall continue for the Hire Period unless terminated earlier in accordance with the applicable Cancellation Clause.

4.5 It is the Hirer's responsibility to ensure that each Order is accurate and complete and that the Equipment is suitable for the Hirer's requirements.

4.6 Nothing in these Terms and Conditions shall require COLEMAN PLANT HIRE LTD to accept any Order placed by the Hirer. COLEMAN PLANT HIRE LTD reserves the right to refuse to hire Equipment to the Hirer for any reason whatsoever at its sole discretion.

5. The Equipment

Right to Equipment and Return of Equipment

5.1 The Hirer acknowledges that the Equipment remains at all times the property of COLEMAN PLANT HIRE LTD (or its supplier as applicable) and title and ownership shall not pass to the Hirer.

5.2 The Hirer has no right, title or interest in the Equipment except that it is hired to the Hirer in accordance with the terms of the Contract.

5.3 On termination of the Contract for whatever reason, all Equipment at such time in the possession of the Hirer shall immediately become due for return to COLEMAN PLANT HIRE LTD. The Hirer grants, and will ensure that the owner of any third party premises grants, COLEMAN PLANT HIRE LTD, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to recover the Equipment. The rights granted in this clause 5.3 are without prejudice to any rights and remedies which may have accrued to COLEMAN PLANT HIRE LTD up to and including the Cancellation Date.

5.4 COLEMAN PLANT HIRE LTD shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Hirer's quiet possession of the Equipment during any Hire Period.

5.5 The Hirer shall immediately notify COLEMAN PLANT HIRE LTD of any loss, accident, damage or defect in the Equipment or if the Hirer considers that the Equipment may cause damage to the Hirer's property.

5.6 The Hirer shall grant or shall procure that COLEMAN PLANT HIRE LTD or its authorised representative is granted access to the Site at all such reasonable times on COLEMAN PLANT HIRE LTD giving the Hirer reasonable notice to:

(a) inspect the Equipment and ensure the Hirer's compliance with its obligations under the Contract; and

(b) carry out any inspections or repairs of the Equipment as provided for under the Contract.

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5.7 Where the Equipment is supplied with fuel the Hirer shall be responsible for returning the Equipment with the same or greater amount of fuel and COLEMAN PLANT HIRE LTD shall be entitled to charge the Hirer for any refuelling costs if the Hirer fails to comply with this clause 5.7, at such rates as may be notified to the Hirer from time to time, even if this is after the submission of the final invoice.

Condition, Use and Storage of the Equipment

5.8 The Hirer:

- (a) shall keep the Equipment in good repair and condition, (fair wear and tear only excepted) save that the Hirer shall not repair or allow any third party to repair the Equipment and shall notify COLEMAN PLANT HIRE LTD immediately if any repair is necessary;
- (b) shall where the Equipment requires fuel, oil and/or electricity, ensure that the proper type of fuel, oil and/or voltage is used;
- (c) shall use the Equipment in compliance with all laws and applicable regulations including any health and safety legislation which relates to the use of the Equipment and in accordance with any operating and/or safety instructions provided to or supplied to the Hirer by COLEMAN PLANT HIRE LTD;
- (d) shall not make any alteration to the Equipment (including defacing or covering up) COLEMAN PLANT HIRE LTD' name plate or mark;
- (e) shall not without the prior written consent of COLEMAN PLANT HIRE LTD, 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;
- (f) shall not, without the prior written consent of COLEMAN PLANT HIRE LTD, part with control of the Equipment (including for the purposes of repair or maintenance);
- (g) shall not do or permit to be done anything which could invalidate COLEMAN PLANT HIRE LTD' insurances;
- (h) is responsible for the security of the Equipment whilst in the Hirer's possession; and
- (i) will take all appropriate measures to secure the Equipment at the Site when not in use and will, subject to Damage Waiver Plus applying in accordance with clause 9, pay COLEMAN PLANT HIRE LTD for any Equipment which is lost, stolen or in COLEMAN PLANT HIRE LTD' reasonable opinion or the opinion of its insurer(s), damaged beyond repair at full replacement value of such Equipment, such value to be confirmed to the Hirer by COLEMAN PLANT HIRE LTD, subject to supporting documentation. Replacement value shall be determined as the manufacturer's retail price at the time of loss, plus all ancillary costs, including but not limited to administration costs and lost hire time costs.

5.9 COLEMAN PLANT HIRE LTD shall during the Hire Period ensure that:

- (a) the Equipment shall be of satisfactory quality, comply with any description provided by the Hirer and shall be fit for its intended purpose;
- (b) the Services shall be carried out with reasonable skill and care; and
- (c) on the Commencement Date, the Equipment shall comply with:
 - i. all applicable laws and statutory regulations; and
 - ii. any reasonable instructions and guidelines issued by the Hirer at the time of hire, including health, safety and security standards.

5.10 If, at any time during the Hire Period, the Hirer becomes aware of a breach of clause 5.9 the Hirer shall:

- (a) give written notice of the breach to COLEMAN PLANT HIRE LTD as soon as reasonably possible once the Hirer has become aware of the breach; and
- (b) give COLEMAN PLANT HIRE LTD a reasonable opportunity to rectify any issues.

5.11 Following receipt of written notice under clause 5.10 COLEMAN PLANT HIRE LTD will:

- (a) repair the Equipment;
- (b) replace the Equipment with equipment of an equivalent or similar specification; or
- (c) reduce the Charges of the relevant Equipment by a sum which is fair in the circumstances.

5.12 COLEMAN PLANT HIRE LTD shall not be responsible to the Hirer for any breach of clause 5.9 and shall not be required to repair or replace the Equipment in accordance with clause 5.11 if:

- (a) the breach arose directly as a result of any act or omission of the Hirer; and/or
- (b) the breach was caused by or contributed to as a result of the misuse, neglect, alteration, mishandling or unauthorised manipulation of the Equipment.

5.13 COLEMAN PLANT HIRE LTD will investigate defective Equipment and, on request, will provide the Hirer with a written report of this investigation.

Damage to or Loss of Equipment

5.14 Subject to Damage Waiver or Damage Waiver Plus applying in accordance with clause 9, the Hirer shall be responsible to COLEMAN PLANT HIRE LTD for:

- (a) all costs and expenses in respect of: (i) rectifying any damage to the Equipment (fair wear and tear excepted) which occurred during the period in which the Equipment was at the Hirer's risk in accordance with clause 6.7; and (ii) cleaning the Equipment following collection of the Equipment, in each case to return the Equipment to a condition fit for hire. Such costs and expenses shall be confirmed to the Hirer by COLEMAN PLANT HIRE LTD, subject to supporting documentation. In addition, the Hirer will continue to pay the Charges, in accordance with clause 7, until any repairs and or cleaning have been completed; and
- (b) the Replacement Cost in respect of lost or stolen Equipment and/or Equipment which is beyond economic repair and the Hirer will continue to pay the Charges, in accordance with clause 7, until the Replacement Cost has been received by COLEMAN PLANT HIRE LTD.

6. Delivery

6.1 COLEMAN PLANT HIRE LTD shall use reasonable efforts to deliver the Equipment to (the) agreed delivery location(s) during Working Hours on the date or within the period specified in the Order. Deliveries to Consumers will be no more than 30 days after the day on which the Contract is entered into.

6.2 If there is a delay in delivery or non-performance by COLEMAN PLANT HIRE LTD, the Hirer may cancel the Contract if the Hirer has given 24 hours' notice to COLEMAN PLANT HIRE LTD requiring the delivery and/or performance to be made and COLEMAN PLANT HIRE LTD has not fulfilled the delivery and/or performance within that period.

6.3 If the Hirer cancels the Contract in accordance with clause 6.2, then:

- (a) COLEMAN PLANT HIRE LTD will refund to the Hirer any sums which the Hirer has paid to COLEMAN PLANT HIRE LTD in respect of the Contract or part of the Contract which has been cancelled; and
- (b) the Hirer will not be required to make any further payments in respect of the Contract or part of the Contract which has been cancelled.

6.4 The Hirer shall at its sole expense provide sufficient access to and from the Site, unloading space, materials and facilities to enable COLEMAN PLANT HIRE LTD to carry out the Services in a safe manner.

6.5 The Hirer shall ensure that the Site where the Equipment is to be delivered and/or Services to be performed is, where necessary, cleared and prepared before delivery or the performance of the Services is to commence. It is the Hirer's responsibility to ensure that COLEMAN PLANT HIRE LTD has sufficient access to be able to deliver the Equipment and COLEMAN PLANT HIRE LTD shall not be in breach of the Contract if it is unable to deliver the Equipment to the Site in a safe manner.

Additional Charges shall apply for any redelivery or attempted redelivery in such circumstances in accordance with clause 6.9.

6.6 Delivery will occur when the Equipment arrives at the delivery address (whether at COLEMAN PLANT HIRE LTD' premises or a Site). On delivery of the Equipment, the Hirer will off-load the Equipment from the delivery vehicle. COLEMAN PLANT HIRE LTD will provide reasonable assistance to unload the Equipment but will only provide such assistance if the Equipment can be unloaded safely.

6.7 Unless otherwise agreed by the parties in writing, risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on delivery. Risk in the Equipment will return to COLEMAN PLANT HIRE LTD once the Equipment is loaded onto the collection vehicle.

6.8 The Hirer shall grant or procure the grant of access to the Site to COLEMAN PLANT HIRE LTD to allow the collection of the Equipment and make the Equipment available for collection by COLEMAN PLANT HIRE LTD on the date and time agreed between the parties at the end of the Hire Period and/or if COLEMAN PLANT HIRE LTD requires the return of the Equipment at any point during the Term to carry out its obligations under the Contract the Hirer shall comply with its obligations set out in clause 6.4 in respect of such collection.

6.9 If COLEMAN PLANT HIRE LTD is unable to deliver or collect the Equipment on the dates agreed it may charge the Hirer reasonable Additional Charges in respect of such inability to deliver or collect including additional delivery charges for any re-delivery of the Equipment (including any third party costs) and any storage charges. In addition: (i) in the event of a failed delivery, the Hirer will pay to COLEMAN PLANT HIRE LTD compensation equal to the value of the Charges which would have been payable had the Equipment been delivered on the agreed delivery date, such amount shall accrue and be payable from the agreed delivery date to the date of actual delivery; and (ii) in the event of a failed collection, the Hirer will pay to COLEMAN PLANT HIRE LTD compensation equal to the value of the Charge which would have been paid had the Equipment been re-hired to the Hirer at the Charges payable prior to the agreed collection date, such amount shall accrue and be payable from the agreed collection date to the date of actual collection.

7. Charges and Payment

7.1 The Hirer shall become liable to pay the Charges from the date of delivery pursuant to clause 6.6.

7.2 The Hirer shall pay the Charges and any Additional Charges for the hire of the Equipment in accordance with these Terms and Conditions.

7.3 COLEMAN PLANT HIRE LTD will be entitled to vary the Charges and any Additional Charges at any time by giving written notice to the Hirer to reflect any variation in the cost of supplying the Equipment which arises as a consequence of:

- (a) any variation in the Hirer's requirements for the Equipment;
- (b) any information provided by the Hirer being inaccurate or incomplete; or
- (c) any failure or delay by the Hirer in providing information.

7.4 COLEMAN PLANT HIRE LTD may, prior to the hire of the Equipment, require the Hirer to pay such deposit as is considered appropriate by COLEMAN PLANT HIRE LTD as notified to the Hirer at the time the Equipment is ordered ("Deposit") and/or require the Hirer to provide details of a valid credit or debit card as a Deposit. The Deposit shall be a deposit against default by the Hirer of payment of any Charges or any loss of or damage caused to the Equipment including any Replacement Cost and shall not act as a limitation of the Hirer's liability in respect of unpaid Charges, Additional Charges, damage or loss to the Equipment or any Replacement Cost.

7.5 Subject to Damage Waiver Plus applying in accordance with clause 9, if the Hirer fails without due cause to make any payment of the Charges or any Replacement Cost or causes any loss or damage to the Equipment (in whole or in part), COLEMAN PLANT HIRE LTD shall be entitled to apply the Deposit or such further sums as are necessary against such default, loss, Replacement Cost or damage either by deduction from the Deposit sum and/or deduction of such further sums as are necessary from the credit or debit card (as applicable). Any Deposit sum (or balance thereof) shall be refundable at the end of the Hire Period.

7.6 Any sum payable under the Contract is exclusive of VAT (and any other similar or equivalent taxes, duties, fees and levies) which shall be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.

7.7 The Charges are exclusive of any Additional Charges. Where Charges are quoted on a daily basis, these shall include any and all weekends and public and bank holidays which fall within the Hire Period.

7.8 The Charges will be payable by the Hirer to COLEMAN PLANT HIRE LTD for the duration of the Hire Period.

7.9 Unless otherwise agreed by the parties in writing or in the Contract, all invoices submitted by COLEMAN PLANT HIRE LTD shall be paid by the Hirer within a period of thirty (30) days from the end of the month in which the relevant invoice is issued.

7.10 If any Charges or Additional Charges are not paid on or before the due date for payment, COLEMAN PLANT HIRE LTD shall be entitled to charge the Hirer interest on that sum at 4% per annum above the base lending rate from time to time of Barclays Bank plc from the due date until the date of payment, such interest to accrue on a daily basis.

7.11 No payment made by the Hirer shall in any way impair or restrict any rights or remedies the Hirer may have under the Contract or otherwise.

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7.12 Save as otherwise expressly provided in the Contract or required by law, all payments to be made by either party under the Contract shall be made in full and without any deduction or withholding including on account of any counter-claim.

7.13 Should any portion of an account fall overdue then the total account will become due on demand. The Hirer will be responsible for reasonable legal charges incurred by COLEMAN PLANT HIRE LTD in the recovery of amounts due or the recovery of the Equipment. In addition COLEMAN PLANT HIRE LTD is entitled to suspend further services to the Hirer.

8. Performance Failure

8.1 If COLEMAN PLANT HIRE LTD fails to supply the Services (or any part thereof) and the failure was not caused by the Hirer and/or the Hirer's failure to comply with its obligations and restrictions under the Contract then, save as otherwise set out in the Contract, the Hirer shall be entitled (without prejudice to any other rights or remedies it may have):

- (a) to require COLEMAN PLANT HIRE LTD to remedy such breach by re-supplying the relevant Services at no additional charge; or
- (b) to require COLEMAN PLANT HIRE LTD to repay or credit to the Hirer that part of the Charges paid by the Hirer relating to the relevant Services that COLEMAN PLANT HIRE LTD has failed to supply.

9. Damage Waiver and Damage Waiver Plus

Damage Waiver

9.1 Subject to clauses 9.2 and 9.7, if the Hirer contracts to pay the Damage Waiver charge, being a sum equal to 10% of the Charges (where available as an option) COLEMAN PLANT HIRE LTD will waive any further charge for rectifying accidentally damaged Equipment.

9.2 If the Hirer does not pay the Damage Waiver charge or if the Damage Waiver does not apply in accordance with clause 9.7 (or otherwise was not available as an option) then the Hirer will be responsible for the entire cost of rectifying any damage to the Equipment (in accordance with clause 5.14(a)) or for the loss of the Equipment (in accordance with clause 5.14(b)) (as applicable).

Damage Waiver Plus

9.3 Subject to clauses 9.4, 9.5, 9.6 and 9.7, if the Hirer contracts to pay the Damage Waiver Plus charge being a sum equal to 15% of the Charges (where available as an option) COLEMAN PLANT HIRE LTD will waive any further charges for (i) rectifying accidentally damaged Equipment; and/or (ii) loss or theft of the Equipment.

9.4 If the Hirer does not pay the Damage Waiver Plus charge or if the Damage Waiver Plus does not apply in accordance with clauses 9.6 and 9.7 (or otherwise was not available as an option) the Hirer shall be responsible for the entire cost of rectifying any damage to the Equipment (in accordance with clause 5.14.1) or for the loss of the Equipment (in accordance with clause 5.14(b)) (as applicable).

9.5 The waiver provided by Damage Waiver Plus is subject to the following conditions:

- (a) the Hirer must be able to demonstrate that reasonable care has been taken to prevent loss;
- (b) theft of Equipment must be reported to the Police and a crime reference number obtained;
- (c) the Hirer must notify COLEMAN PLANT HIRE LTD within forty eight (48) hours of the theft and obtain an COLEMAN PLANT HIRE LTD theft report form. The completed form must be returned to: Claims Department, COLEMAN PLANT HIRE LTD Hire, Brook Way Business Park, Ivyhouse Lane, Hastings, East Sussex TN35 4NN. Tel: 01424 234534 email info@colemanplanthireltd.com; and
- (d) the maximum value of loss waived for any single Contract will be five thousand pounds (£5,000). Any loss above this value will be charged to the Hirer by COLEMAN PLANT HIRE LTD.

9.6 Damage Waiver Plus shall not apply and the Hirer shall be responsible for any damage to or loss of the Equipment in the following circumstances:

- (a) theft of consumable goods;
- (b) loss due to the dishonesty, wilful defect or negligence of any employee, sub-contractor or agent of the Hirer;
- (c) theft from a vehicle where the Equipment was left visible and unattended;
- (d) loss of Equipment revealed only when an inventory is made or at collection;
- (e) loss arising from civil disturbance; and/or
- (f) loss occurring outside the UK and the Republic of Ireland.

Limitations and Exclusions for Damage Waiver and Damage Waiver Plus

9.7 Damage Waiver or Damage Waiver Plus does not cover and the Hirer shall remain responsible for:

- (a) the first £50 or 20% of the Replacement Cost (whichever is the greater amount) of any Equipment loss claim;
- (b) 50% of the Replacement Cost for theft of Equipment left unattended overnight outside a secure compound or building or stored overnight in a secured vehicle;
- (c) tyre punctures and / or Replacement Costs due to irreparable tyre damage;
- (d) damage or loss caused by the Hirer's negligence, damage or breach of the Contract including damage or loss connected to the Hirer's obligations set out in clause 5.8; and
- (e) damage or loss caused by or contributed to as a result of the misuse, neglect, alteration, mishandling or unauthorised manipulation of the Equipment by the Hirer.

10. Variation

COLEMAN PLANT HIRE LTD may update these Terms and Conditions from time to time, for example, to comply with changes in the law or to take account of new ordering or payment processes or new products COLEMAN PLANT HIRE LTD may offer. The Hirer must always check these Terms and Conditions prior to placing an Order to ensure that the terms which apply to that Order are understood.

11. General

11.1 If COLEMAN PLANT HIRE LTD fails to insist that the Hirer performs any of its obligations under the Contract or if COLEMAN PLANT HIRE LTD does not enforce its rights against the Hirer, or if COLEMAN PLANT HIRE LTD delays doing so, that will not mean that COLEMAN PLANT HIRE LTD has agreed not to enforce its rights against the Hirer and will not mean that the Hirer does not have to comply with those obligations. If COLEMAN PLANT HIRE LTD does waive a default by the Hirer, COLEMAN PLANT HIRE LTD will only do so in writing, and that will not mean that COLEMAN PLANT HIRE LTD will automatically waive any later default by the Hirer.

11.2 Each of the paragraphs of these Terms and Conditions operates separately. If any court or relevant authority decides that any term is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

11.3 The parties do not intend that any part of these Terms and Conditions or any term of the Contract shall be enforceable by any person other than the parties.

11.4 These Terms and Conditions and the Contract are personal to the Hirer and the Hirer shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract without the prior written consent of COLEMAN PLANT HIRE LTD.

12. Governing Law and Jurisdiction

12.1 These Terms and Conditions and the Contract and any non-contractual obligations arising out of or in connection with them will be governed by English law.

12.2 COLEMAN PLANT HIRE LTD and the Hirer both agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with these Terms and Conditions or the Contract (including in relation to any non-contractual obligations), except if the Hirer is a Consumer and a resident of Northern Ireland the Hirer may also bring proceedings in Northern Ireland, and if the Hirer is a resident of Scotland, the Hirer may also bring proceedings in Scotland.

PART B

TERMS APPLYING ONLY TO CONSUMERS

WHERE THE HIRER IS A CONSUMER, THE HIRER HAS LEGAL RIGHTS IN RELATION TO THE PROVISION OF EQUIPMENT AND SERVICES. ADVICE ABOUT CONSUMERS LEGAL RIGHTS IS AVAILABLE FROM THE CITIZENS' ADVICE BUREAU OR TRADING STANDARDS OFFICE. NOTHING IN THESE TERMS AND CONDITIONS WILL AFFECT THESE LEGAL RIGHTS.

B 1. COLEMAN PLANT HIRE LTD' liability to Hirer

If COLEMAN PLANT HIRE LTD fails to comply with these Terms and Conditions, COLEMAN PLANT HIRE LTD shall be responsible for loss or damage the Hirer suffers that is a foreseeable result of such breach or COLEMAN PLANT HIRE LTD' negligence. COLEMAN PLANT HIRE LTD shall not be responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it was an obvious consequence of COLEMAN PLANT HIRE LTD' breach or if it was contemplated by the Hirer and COLEMAN PLANT HIRE LTD at the time the Contract is entered into.

B 2. Use of Equipment

B 2.1 COLEMAN PLANT HIRE LTD hires the Equipment to the Hirer on the basis that the Equipment is used only for private or non-commercial use. The Hirer must not use the Equipment for commercial purposes, and COLEMAN PLANT HIRE LTD shall have no liability to the Hirer whatsoever for any loss of profit, loss of business, business interruption, or loss of business opportunity.

B 2.2 COLEMAN PLANT HIRE LTD does not in any way exclude or limit its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- (d) any breach of the terms implied by section 13 to 15 of the Sale of Goods Act 1979 (description, satisfactory quality, fitness for purpose and samples);
- (e) any breach arising under Section 2(3) of the Consumer Protection Act 1987; or
- (f) any matter which it is not permitted by law to limit or exclude, or attempt to limit or exclude, its liability.

B 3. Automatic Cancellation of Contract

Subject to COLEMAN PLANT HIRE LTD' and the Hirer's rights to cancel set out in the Contract, the Hire Period shall not exceed 88 days, after which time the relevant Contract shall automatically end.

B 4. The Hirer's Rights to Cancel

B 4.1 The Hirer may cancel any Order for Services at any time before the Hire Period starts by sending written notice to COLEMAN PLANT HIRE LTD to the following address COLEMAN PLANT HIRE LTD, Brook Way Business Park, Ivyhouse Lane, Hastings, East Sussex TN35 4NN or to the address of the COLEMAN PLANT HIRE LTD premises where the order was placed.

B 4.2 Where the Hirer cancels an Order because of COLEMAN PLANT HIRE LTD' failure to comply with these Terms and Conditions (except where COLEMAN PLANT HIRE LTD has been affected by an Event Outside COLEMAN PLANT HIRE LTD' Control), the Hirer does not have to make any payment to COLEMAN PLANT HIRE LTD.

B 4.3 If the Hirer cancels an Order under clause B 4.1. and the Hirer has made any payment in advance for Services that have not been provided to the Hirer, COLEMAN PLANT HIRE LTD will refund these amounts.

B 4.4 If COLEMAN PLANT HIRE LTD has already started work on the Order and the Hirer cancels such Order under clause B 4.1. then COLEMAN PLANT HIRE LTD will be entitled to charge the Hirer any costs COLEMAN PLANT HIRE LTD reasonably incurred in starting to fulfil the Order. This charge may be deducted from any refund that is due to the Hirer under clause B 4.3 or, if no refund is due to the Hirer, invoiced to Hirer. COLEMAN PLANT HIRE LTD will advise the Hirer of the costs incurred when the Hirer cancels an Order.

B 4.5 At any time after delivery of an Order the Hirer may cancel the Services by providing COLEMAN PLANT HIRE LTD with at least 5 Business Days' notice in writing. COLEMAN PLANT HIRE LTD will thereafter refund any advance payment the Hirer has made for Services that have not been provided.

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B 4.6 Once the Equipment has been delivered to the Site, the Hirer may cancel the Contract with immediate effect by giving COLEMAN PLANT HIRE LTD written notice if:

- (a) COLEMAN PLANT HIRE LTD breaches the Contract in any material way and does not correct or fix the situation within 14 days of receiving written notice from the Hirer, requesting that the situation be remedied. Any such notice should be sent to COLEMAN PLANT HIRE LTD to the following address COLEMAN PLANT HIRE LTD Brook Way Business Park, Ivyhouse Lane, Hastings, East Sussex TN35 4NN or to the address of the COLEMAN PLANT HIRE LTD premises where the order was placed;
- (b) COLEMAN PLANT HIRE LTD goes into liquidation or a receiver or an administrator is appointed over its assets;
- (c) COLEMAN PLANT HIRE LTD changes these Terms and Conditions under clause 10 of Part A; or
- (d) COLEMAN PLANT HIRE LTD is affected by an Event Outside COLEMAN PLANT HIRE LTD' Control.

B 5. COLEMAN PLANT HIRE LTD' Rights to Cancel

B 5.1 COLEMAN PLANT HIRE LTD may have to cancel an Order before the start date for the Services, due to an Event Outside COLEMAN PLANT HIRE LTD' Control or the unavailability key personnel, the Equipment or other equipment without which COLEMAN PLANT HIRE LTD cannot provide the Services. If this happens:

- (a) COLEMAN PLANT HIRE LTD will promptly inform the Hirer;
- (b) if the Hirer has made any payment in advance for Services that have not been provided to the Hirer, COLEMAN PLANT HIRE LTD will refund these amounts to the Hirer; and
- (c) where COLEMAN PLANT HIRE LTD has already started work on the Order for Services, COLEMAN PLANT HIRE LTD will not charge the Hirer anything and the Hirer will not have to make any payment to COLEMAN PLANT HIRE LTD.

B 5.2 Once COLEMAN PLANT HIRE LTD has begun to provide the Services to the Hirer, COLEMAN PLANT HIRE LTD may cancel the Contract at any time by providing the Hirer with at least 5 Business Days' notice in writing. If the Hirer has made any payment in advance for Services that have not been provided to the Hirer, COLEMAN PLANT HIRE LTD will refund these amounts to the Hirer.

B 5.3 COLEMAN PLANT HIRE LTD may cancel the Contract at any time with immediate effect by giving the Hirer written notice if:

- (a) the Hirer does not pay COLEMAN PLANT HIRE LTD when the Hirer is supposed to as set out in clause 7 of Part A. This does not affect COLEMAN PLANT HIRE LTD' right to charge the Hirer interest under clause 7 of Part A; or
- (b) the Hirer breaks the Contract in any other material way and does not correct or fix the situation within 10 Business Days of COLEMAN PLANT HIRE LTD asking the Hirer to in writing.

B 6. Cancellation for Bankruptcy

B 6.1 COLEMAN PLANT HIRE LTD may, immediately on giving written notice to the Hirer, terminate the Contract if the Hirer becomes bankrupt and the Hirer shall notify the COLEMAN PLANT HIRE LTD immediately upon becoming bankrupt.

B 6.2 The Hirer may, immediately on giving written notice to COLEMAN PLANT HIRE LTD, terminate the Contract if COLEMAN PLANT HIRE LTD becomes insolvent and COLEMAN PLANT HIRE LTD shall notify the Hirer immediately upon becoming insolvent.

B 7. Variation

If COLEMAN PLANT HIRE LTD has to revise these Terms and Conditions during the term of the Contract, COLEMAN PLANT HIRE LTD will give the Hirer at least one month's written notice of any changes to these Terms and Conditions before they take effect. The Hirer can choose to cancel the Contract, before the changes come into effect by sending written notice to COLEMAN PLANT HIRE LTD to the following address COLEMAN PLANT HIRE LTD Brook Way Business Park, Ivyhouse Lane, Hastings, East Sussex TN35 4NN or to the address of the COLEMAN PLANT HIRE LTD premises where the order was placed.

PART C

TERMS APPLYING ONLY TO TRADERS

C 1. Formation of Contracts

Each Contract will be subject to these Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Hirer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

C 2. The Equipment

C 2.1 COLEMAN PLANT HIRE LTD shall have no liability to the Hirer for damage to the Hirer's property if the Hirer fails to comply with clause 5.5 of Part A.

C 2.2 Each party shall use its reasonable endeavours to identify, and obtain as relevant, all consents necessary for the fulfilment of its obligations under the Contract.

COLEMAN PLANT HIRE LTD shall not be in breach of the Contract if it cannot supply any or all of the Services or carry out any of its other obligations under the Contract due to the Hirer's failure to obtain such consents as may be required to allow COLEMAN PLANT HIRE LTD to provide the Services and otherwise carry out its obligations under the Contract.

C 2.3 If the Hirer breaches clause 5.8(f) of Part A the Hirer shall, immediately upon COLEMAN PLANT HIRE LTD' request procure the return of the Equipment to the Hirer. If the Equipment is not returned to the Hirer within 5 days of COLEMAN PLANT HIRE LTD' request, the Equipment shall be deemed to be lost and the Hirer shall be responsible for the replacement of the Equipment as set out in clause 5.14 of Part A and the Charges and any Additional Charges will continue to apply until settlement is made to the satisfaction of COLEMAN PLANT HIRE LTD.

C 2.4 The remedies in clause 5.11 of Part A shall be the Hirer's only remedy for a breach of clause 5.9 of Part A by COLEMAN PLANT HIRE LTD.

C 2.5 The Hirer shall not create or permit the creation of any encumbrance (including any charge or lien) security interest or type of preferential arrangement on or over the Equipment.

C 3. Delivery

C 3.1 The Hirer shall procure that a duly authorised representative of the Hirer shall be present at the Site where the Equipment is to be delivered. Acceptance of delivery of the Equipment by such representative shall constitute conclusive evidence that the Hirer has accepted such delivery.

C 3.2 Time of delivery of the Equipment and/or performance of the Services will not be of the essence. If COLEMAN PLANT HIRE LTD is unable for any reason to fulfil any delivery or performance on the specified date, COLEMAN PLANT HIRE LTD will not be deemed to be in breach of the Contract.

C 3.3 If the Equipment is unavailable for inspection or collection within 5 days of the scheduled date for inspection or collection as agreed between COLEMAN PLANT HIRE LTD and the Hirer, the Equipment shall be deemed to be lost and the Hirer shall be responsible for the replacement of the Equipment as set out in clause 5.14 of Part A and the Charges and any Additional Charges will continue to apply until settlement is made to the satisfaction of COLEMAN PLANT HIRE LTD.

C 3.4 If COLEMAN PLANT HIRE LTD delivers a quantity of the Equipment less than the quantity specified in the Order, the Hirer shall agree the shortages with COLEMAN PLANT HIRE LTD and note the same on the delivery document. The Hirer may elect to:

- (a) refuse to take delivery of or reject the Equipment and the Hirer shall have liability for the cost of delivery only; or
- (b) take delivery of and keep the lesser quantity of Equipment or any part thereof and pay for them at the rate specified in the Order subject to a pro-rata reduction in the relevant Charges.

C 3.5 If COLEMAN PLANT HIRE LTD delivers a quantity of Equipment greater than the quantity specified in the Order, the Hirer may elect to:

- (a) accept and pay for all the Equipment delivered at the Charges; or
- (b) accept and pay for the quantity specified in the Order and reject the excess.

C 4. Charges and Payment

C 4.1 If the Hirer is required in accordance with the relevant tax laws to make any withholding in respect of taxes from payments made or due to COLEMAN PLANT HIRE LTD, it shall provide COLEMAN PLANT HIRE LTD with a certificate evidencing that withholding has been made and properly accounted for to the relevant tax authorities and shall provide COLEMAN PLANT HIRE LTD with such assistance as may reasonably be required to enable COLEMAN PLANT HIRE LTD to reclaim such taxes.

C 4.2 COLEMAN PLANT HIRE LTD shall use its reasonable endeavours to ensure that all invoices:

- (a) bear the relevant Order number;
- (b) are submitted for payment to the address stated in the Order; and
- (c) enclose such supporting documentation as the Hirer may reasonably request (subject to such reasonable administrative charges as may be levied by COLEMAN PLANT HIRE LTD).

C 4.3 Failure of COLEMAN PLANT HIRE LTD to comply with clause C 4.2 shall not permit the Hirer to withhold payment or reject an invoice.

C 4.4 If COLEMAN PLANT HIRE LTD has granted a credit account to the Hirer:

- (a) then payment of any Charges or any other sums due under the Contract, including VAT, shall be made in full cleared funds by the end of the month following the date of the invoice; and
- (b) COLEMAN PLANT HIRE LTD may set a reasonable credit limit.

C 4.5 COLEMAN PLANT HIRE LTD reserves the right to terminate or suspend the Contract if allowing it to continue would result in the Hirer exceeding its credit limit or the Hirer has already exceeded its credit limit.

C 4.6 The Hirer should notify COLEMAN PLANT HIRE LTD in writing of any queries concerning invoices within 14 days of the invoice date. COLEMAN PLANT HIRE LTD will not grant an extension to credit account payment terms for unresolved invoice queries that have been notified after such date.

C 5. COLEMAN PLANT HIRE LTD' Liability

C 5.1 Neither party excludes or limits its liability, if any, to the other party for:

- (a) death or personal injury resulting from its negligence or by the negligence of a person for whom it is vicariously liable;
- (b) any breach of its obligations implied by section 2 of the Supply of Goods and Services Act 1982;
- (c) for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or
- (d) any matter which it would be illegal for it to exclude or to attempt to exclude its liability.

C 5.2 Subject to clause C 5.1, COLEMAN PLANT HIRE LTD' maximum aggregate liability to the Hirer for loss of or damage to tangible property caused by its negligence or act or omission shall be limited to five million pounds (£5,000,000).

C 5.3 Subject to clause C 5.1, COLEMAN PLANT HIRE LTD' maximum aggregate liability to the Hirer arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of COLEMAN PLANT HIRE LTD' obligations under the Contract but excluding any liability which falls within the terms of clause C 5.1 and C 5.2, shall be limited to the Charges and other sums paid or payable in respect of the Contract.

C 5.4 Subject to clause C 5.1, neither party shall have any liability to the other party for any:

- (a) loss of profit (direct or indirect);
- (b) loss of revenue, loss of production or loss of business (in each case whether direct or indirect);
- (c) loss of goodwill, loss of reputation, loss of opportunity and/or loss of operation (in each case whether direct or indirect);
- (d) loss of anticipated saving or loss of margin (in each case whether direct or indirect);
- (e) liability of the other party to third parties (whether direct or indirect); or

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(f) indirect, consequential or special loss, arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of that party's obligations under the Contract and/or any defect in or breakdown of the Equipment or the Equipment's unsuitability for the Hirer's intended purpose.

C 5.5 Clause C 5.4 shall not limit or exclude COLEMAN PLANT HIRE LTD' ability to claim against the Hirer in respect of:

- (a) any loss of or damage to Equipment subject to any Damage Waiver or Damage Waiver Plus applying in accordance with clause 9 of Part A;
- (b) the ability to recover the Charges applicable for any remaining Hire Period on early termination of the Contract as set out in these Terms and Conditions; and/or
- (c) costs and expenses in respect of recovery of the Equipment as set out in these Terms and Conditions.

C 5.6 The Contract sets out the full extent of COLEMAN PLANT HIRE LTD' obligations and liabilities in respect of the Equipment and the Services including the hire of Equipment to the Hirer. 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 Hirer except as specifically stated in the Contract. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

C 6. Cancellation

C 6.1 Where the hire is to a Hirer who is an "individual" (which includes without limitation a sole trader or partnership) under the Consumer Credit Act 1974, the Hire Period shall not exceed 88 days, after which time the relevant Contract shall be deemed to have automatically terminated.

C 6.2 Either party may, immediately on giving written notice to the other party, terminate the Contract without payment of compensation if the other party:

- (a) commits a material breach of the Contract which is incapable of remedy;
- (b) commits a material breach of the Contract which can be remedied but fails to remedy that breach within seven (7) days of a written notice setting out the breach and requiring it to be remedied being given by the other party;
- (c) purports to assign any of its obligations under the Contract without the prior written consent of the other party;
- (d) becomes Insolvent and each party shall notify the other party immediately upon becoming Insolvent; and/or
- (e) ceases to carry on business.

C 6.3 Either party may terminate the Contract on giving the other party not less than five (5) days' notice in writing.

C 6.4 COLEMAN PLANT HIRE LTD may terminate the Contract immediately on giving written notice to the other party if:

- (a) the Equipment is lost, stolen, seized, confiscated or in COLEMAN PLANT HIRE LTD' reasonable opinion or the opinion of its insurer(s), damaged beyond repair;
- (b) the Hirer fails to pay any of COLEMAN PLANT HIRE LTD' invoices within thirty (30) days from the due date for payment set out in clause 7.9 of Part A.

C 6.5 The termination of the Contract (or any part of it) shall be without prejudice to the rights and remedies of either party which may have accrued up to the Termination Date.

C 6.6 Upon the termination of the Contract, howsoever caused, without prejudice to any other rights or remedies of COLEMAN PLANT HIRE LTD:

- (a) COLEMAN PLANT HIRE LTD shall be entitled to invoice all Charges and Additional Charges incurred which have not yet been invoiced;
- (b) the Hirer shall pay on demand all Charges and Additional Charges which are due but are unpaid at the date of demand, together with any interest accrued pursuant to clause 7.10 of Part A;
- (c) the Hirer shall pay on demand all costs and expenses incurred by COLEMAN PLANT HIRE LTD in recovering the Equipment and/or in collecting any sum due under the Contract (including any storage, transport, insurance, repair, legal and remarketing costs);

C 6.7 Subject to clause 6.8 of Part A, on the termination or expiry of the Contract COLEMAN PLANT HIRE LTD' consent to the Hirer's possession of the Equipment shall terminate and COLEMAN PLANT HIRE LTD may take possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located.

C 6.8 In this clause C 6., "Insolvent" means where the Hirer ceases to trade, is unable to pay its debts as they fall due or where the Hirer becomes, or in the reasonable opinion of COLEMAN PLANT HIRE LTD, is likely to become, insolvent or bankrupt including where the Hirer has a receiver, administrative receiver, administrator or provisional liquidator appointed; is subject to a notice of intention to appoint an administrator; passes a resolution for its winding-up has a winding up order made by a court in respect of it; enters into any composition or arrangement with creditors or has any steps or actions taken in connection with any of these procedures in any jurisdiction.

C 7. Intellectual Property Rights

C 7.1 "Intellectual Property Rights" means all intellectual and industrial property rights whether registered or unregistered (including know how and rights to prevent passing off) in the United Kingdom and all other countries in the world and together with all applications, renewals and extensions of the same.

C 7.2 No right of licence is granted to the Hirer in respect of the Intellectual Property Rights of COLEMAN PLANT HIRE LTD, except the right to use the Equipment and/or the Services in the Hirer's ordinary course of business for the purpose for which they were supplied.

C 8. Confidentiality

C 8.1 "Confidential Information" means any information (whether written, oral, in electronic form or in any other media), which would be regarded as confidential by a reasonable business person, that is disclosed by or on behalf of a party or a member of the party's Group to the other party or a member of the other party's Group in connection with the Contract and that relates (in whole or in part) to the disclosing party or its business.

C 8.2 Each party will keep secret and confidential all Confidential Information belonging to the other party which is disclosed or obtained in connection with the Contract and shall not use nor disclose the same save for the purposes of the Contract or with the prior written consent of the relevant party.

C 8.3 Where disclosure is made to any employee, consultant, sub-contractor or agent, who needs to know the Confidential Information for the purposes of the Contract it shall be done subject to the obligations set out in the Contract and each party shall procure that any such employee, consultant, sub-contractor or agent complies with such obligations.

C 8.4 The obligations of confidentiality in this clause C 8. shall not extend to any matter which:

- (a) is in or enters the public domain other than as a result of a breach of the obligations of confidentiality under the Contract; or
- (b) is independently disclosed by a third party entitled to disclose the same; or
- (c) is required to be disclosed under any applicable law, or by order of a court, governmental body or authority of competent jurisdiction.

C 8.5 Each party shall on demand and on the termination of the Contract return to the other party all Confidential Information belonging to the other party that it has in its possession.

C 9. Information

Either party shall on request from the other supply such information as is reasonably required in relation to the performance of any obligation under the Contract.

C 10. Data Protection

C 10.1 For the purpose of this clause C 10. the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Sensitive Personal Data" and "Processing" will be as defined in the Data Protection Act 1998 and "Process" and "Processed" will be construed accordingly.

C 10.2 Each party will, when processing Personal Data as a Data Controller for the purpose(s) of performing its obligations under the Contract, comply in all respects with the Data Protection Act 1998 and otherwise in accordance with this clause.

C 10.3 The Hirer acknowledges that under the terms of the Contract it may act as a Data Processor of Personal Data in respect of which COLEMAN PLANT HIRE LTD is the Data Controller ("COLEMAN PLANT HIRE LTD' Personal Data").

C 10.4 Where the Hirer processes COLEMAN PLANT HIRE LTD' Personal Data for the COLEMAN PLANT HIRE LTD as Data Processor it will:

- (a) Process COLEMAN PLANT HIRE LTD' Personal Data only for the purpose(s) of performing its obligations under the Contract;
- (b) Process COLEMAN PLANT HIRE LTD' Personal Data in accordance with the COLEMAN PLANT HIRE LTD' instructions; and
- (c) establish and maintain appropriate technical and organisational measures to maintain security, prevent unauthorised or unlawful access to or Processing of COLEMAN PLANT HIRE LTD' Personal Data and accidental loss or destruction of, or damage to COLEMAN PLANT HIRE LTD' Personal Data.

C 11. Disputes

C 11.1 If a dispute arises out of or in connection with the Contract (a "Dispute") either party may by written notice to the other party refer the matter for resolution.

C 11.2 Once a notice of referral has been served in relation to a Dispute that Dispute shall be referred for resolution to the Managing Director (or equivalent position) for the time being of each party. Those representatives shall meet at the earliest convenient time and in any event within 7 days of the date of service of the notice of referral and shall attempt to resolve the Dispute.

C 11.3 If a Dispute is not resolved within 14 days of the service of the referral notice the parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.

C 11.4 Subject to clause C 11.5, the procedures set out in clause C 11.1 to C 11.3 (inclusive) will be followed prior to the commencement of any proceedings by either party in relation to a Dispute. Save as provided in this clause C 11.4 neither party shall be prevented or delayed from commencing proceedings at any time.

C 11.5 Nothing in this clause C 11. will prevent or delay either party from seeking orders for specific performance, interim or final injunctive relief or commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

C 12. Notices

C 12.1 Any notices sent under the Contract must be in writing, delivered by hand or sent by pre-paid first class post or recorded delivery to the parties at their registered addresses.

C 12.2 Any notice or communication given in accordance with clause C 12.1 shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery; or
- (b) if sent by pre-paid first class post or recorded delivery at 9.00 a.m. on the second Business Day after the date of posting.

C 12.3 This clause C 12. shall not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

C 13. General

C 13.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

- (a) neither party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement which is not expressly set out in the Contract; and
- (b) nothing in this clause C 13.1 shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

C 13.2 Nothing in the Contract and no action taken by the parties in connection with it or them shall create a partnership or joint venture or relationship of employer and employee between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.

C 13.3 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.

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