



The Pensteel Range of Rental IBCs

Conditions of Hire

1. Interpretation

1.1 In these Conditions.

'Business Day' means a day on which banks in the City of London are open for a full range of business;

Clean-out Certificate means a certificate to be issued by the Hirer or its agent or the Pool Operator or its agent once all internal and external cleaning, satisfactory to the Pool Operator of the Goods, has been completed detailing the previous product, the internal (and external if appropriate) cleaning regime, statement of the cleaning procedure adopted and if there is Damage or Pitting Corrosion a schedule setting out details of the Damage or Pitting Corrosion;

'Commencement Date' means the date the Pool Operator delivers the Goods or makes the Goods available for collection by the Hirer;

'Conditions' means the standard terms and conditions of hire set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Pool Operator and Hirer and signed by for the Pool Operator;

'Contract' means the contract between the Pool Operator and the Hirer for the hire of the Goods to the Hirer comprising this Contract;

'Damage' means all damage that is not Wear and Tear.

'Default Rate' means an annual rate of 4% over Lloyds Bank PLC's base rate from time to time compounded quarterly and calculated on a day to day basis;

'Depot' means any of the depots whose addresses are set out in the Schedule under the heading "Depots";

'Early Return Payment' means the sum specified in the Schedule (described under TYPE as ERO) to be paid by the Hirer if the Goods are returned to a Depot before the expiry of the Period of Hire;

'Goods' means the intermediate bulk containers referred to in the Schedule and all replacement and renewals of such goods and the component parts of it or them and all accessories and additions to it or them. References to the Goods shall (where the context so permits) be construed as including a reference to any of them;

'Hirer' means the firm, person, corporation or public authority named in the Schedule to this Contract who is hiring the Goods from the Pool Operator and includes their successors and personal representatives and employees,

'Normal Working Hours' means from 9.00 a.m. to 5.00p.m. on a Business Day;

'Period of Hire' means the period of hire stated in the Schedule to this Contract (including the day of commencement and the day of termination), subject to earlier termination in accordance with these Conditions or such longer period as is referred to in Clauses 10.4, 11.3, 11.4 and 12;

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'Pool Operator' means the person firm or company hiring the Goods to the Hirer and whose address is specified in the Schedule;

'Pitting Corrosion' means attack of the Goods by a product causing pitting corrosion or any other type of corrosion or erosion affecting the life of the Goods;

'Rental' means the daily rental figure per intermediate bulk container specified in the Schedule (under TYPE, MAIN);

'Replacement Cost' means the amount set out in the Schedule estimated by the Pool Operator to be the replacement cost of each of the intermediate bulk containers comprising the Goods;

Schedule is the Schedule annexed to this Contract;

'Title Holder' means the legal or beneficial owner of the goods from time to time;

'Wear and Tear' means scrapes and abrasions and dents in cladding sheets where fitted which the Pool Operator in his sole opinion deems to be minor. Pitting Corrosion is not wear and tear.

1.2 Any reference in this Contract to "the Pool Operator's negligence" shall be construed as including a reference to "the negligence of anyone for whom the Pool Operator is vicariously liable".

1.3 The Pool Operator shall hire and the Hirer shall take on hire the Goods in accordance with any written quotation of the Pool Operator which is accepted by the Hirer or any written order of the Hirer which is accepted by the Seller subject in either case to this Contract which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Hirer.

1.4 No variation to this Contract shall be binding unless agreed to in writing between the authorised representative of the Pool Operator and Hirer.

1.5 The Pool Operator's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Pool Operator in writing and in entering into the Contract the Hirer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

1.6 Any advice or recommendation given by the Pool Operator or its employees or agents as to the storage handling application or use of the Goods which is not confirmed in writing by the Pool Operator is followed or acted upon entirely at the Hirer's own risk and accordingly the Pool Operator shall not be liable for any such advice or recommendation which is not so confirmed.

1.7 Any typographical, clerical or other error or omission in any sales literature, quotation, pricelist, acceptance of offer for invoice or other document or information issued by the Pool Operator shall be subject to correction without any liability on the part of the Pool Operator.

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2. The Hire

2.1 The hiring of the Goods shall commence on the Commencement Date and shall continue for the Period of Hire (subject to earlier termination) or such longer period as referred to in Clauses 10.4, 11.3, 11.4 and 12 as provided in these Conditions.

3. Delivery of Goods

3.1 The hirer must satisfy himself that the Goods are in good working order, repair and condition and that the Goods are not Damaged in any way (and in particular that none of the Goods has Pitting Corrosion) before accepting delivery of the Goods and the Hirer acknowledges that the Pool Operator relies on the Hirer to inspect the Goods immediately after delivery and to ensure that they are of satisfactory quality. The Hirer must notify the Pool Operator in writing of any Damage, other defect of Pitting Corrosion existing at the Commencement of Hire as soon as possible after delivery. The Pool Operator makes no warranty that the Goods are suitable for the purpose for which the Hirer may wish to use them and the Hirer acknowledges that it uses the Goods entirely at its own risk. The Pool Operator will then endeavour to provide the Hirer with replacement Goods if any are available at the Pool Operator's premises on the date such notification is made.

3.2 Delivery of the Goods shall be made by the Hirer collecting the Goods at the Depot at any time after the Pool Operator has notified the Hirer that the Goods are ready for collection or, if some other place for delivery is agreed by the Pool Operator, by the Pool Operator delivering the Goods to that place. Unless otherwise agreed by the Pool Operator and the Hirer in writing all Rental and other payments referred to in this Contract are on an ex-Depot basis and where the Pool Operator agrees to deliver the Goods otherwise than at the Depot the Hirer shall be liable to pay the Pool Operator's charges for transport, packaging and insurance.

3.3 Any time estimate or dates quoted for delivery are approximate only and the Pool Operator shall not be liable for any loss (including loss of profit) costs, damages or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Pool Operator's negligence). Time for delivery shall not be of the essence.

3.4 If the Hirer fails to take delivery of the Goods at the time stated for delivery (otherwise than by reason of any cause beyond the Hirer's reasonable control or by reason of the Pool Operator's fault) then without prejudice to any other right or remedy available to the Pool Operator the Pool Operator may store the Goods until actual delivery and the Hirer will pay the Pool Operator a sum equal to the Rental which would have been paid in respect of the Goods from the time stated for delivery until actual delivery.

4. Rental and other documents

4.1 The Hirer shall pay to the Pool Operator for the hiring of Goods under this Contract during the period of Hire the Rental and other payments in the amounts and at the intervals or times specified in this Contract together with any value added tax or other sales taxes payable in respect of them.

4.2 The Rental shall be payable as specified in the Schedule, (or if no basis for payment is specified in the Schedule shall be payable monthly in advance). The Hirer shall pay the Rental within thirty days of the date of each invoice.

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4.3 Payment of any Rental and any other sums payable under this Contract shall be made without any set-off and shall be due without previous demand or invoice and shall be made by the Hirer of any Rental and any other sums payable under this Contract so as to be received by the Pool Operator in cleared funds on its due date.

4.4 If the date on which any amount is payable by the Hirer shall not be a Business Day such amount shall be paid by the Hirer on the next subsequent day which is a Business Day.

4.5 Time shall be of the essence in respect of the payment of all sums due under this Contract and the Hirer shall be deemed to have repudiated this Contract if any Rental remains unpaid for 30 days or more after such Rental becomes due for payment.

4.6 The Hirer shall pay interest at the Default Rate on all amounts overdue until payment of the outstanding sum (both before and after judgement).

4.7 Payment shall be made to the Pool Operator or as the Pool Operator may otherwise direct. Any payment agreed to be made by post shall be at the sole risk of the Hirer.

4.8 Any payments made by the Hirer to the Pool Operator may be appropriated by the Pool Operator in or towards satisfaction of any sums due and owing to the Pool Operator under this Contract even though the Hirer may have purported to appropriate such payments in some other way and the Pool Operator may also appropriate any such payment in part towards any sums which are due under this Contract and in part towards satisfaction of any sums due by the Hirer to the Pool Operator otherwise than under this Contract.

5. Hirer's duties

5.1 The Hirer undertakes and agrees;

5.1.1 to take all reasonable and proper care of the Goods and keep them in good and serviceable condition (Wear and Tear excepted) and to indemnify the Pool Operator on demand against loss or Damage of the Goods howsoever caused.

5.1.2. to carry out all maintenance requirements in respect of the Goods so as to keep the Goods in good working order, repair and condition.

5.1.3. to bear on demand the cost of repair or rectification of any damage to the Goods resulting from accident, negligence or improper use of or failure to maintain the Goods by the Hirer or any person permitted by the Hirer to use the Goods;

5.1.4. to take such further steps as may be properly recommended by the Pool Operator in writing or may otherwise be necessary to ensure that the Goods will be safe and without risk to health and safety when properly used by the Hirer or authorised users;

5.1.5. (to the extent relevant) forthwith to comply in all respects with the requirements of any improvement or prohibition notice served on the Hirer in respect of or relating to the use of the Goods under the Health and Safety at Work Act 1974 (except only insofar as the effect of the notice is suspended on the making of an appeal against it in accordance with the provisions of that Act);

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5.1.6. not to make or cause or permit to be made any alteration amendment modification or addition to the Goods;

5.1.7. to ensure that any products carried in the Goods are compatible with the construction material of the wetted parts of the Goods;

5.1.8. (without prejudice to any of the Hirer's other obligations arising under this Contract or otherwise howsoever) to use best endeavours to ensure that no Pitting Corrosion or other Damage occurs in any of the Goods. Any cost of rectifying Damage will be borne by the Hirer. Any cost of replacement parts to enable the container to retain its UN certification will be borne by the Hirer. Any cost of replacement of the container due to Pitting Corrosion will be borne by the Hirer.

5.1.9. to indemnify the Pool Operator in respect of all costs, expenses, losses or liabilities of any nature and against all actions, claims, demands, proceedings (civil or criminal) which may be brought against, made, suffered or incurred by the Pool Operator in connection with any Pitting Corrosion or other Damage or otherwise directly or indirectly arising from or in connection with any breach of this Contract by the Hirer or the use of the Goods by the Hirer.

5.1.10. to permit the Pool Operator and any persons duly authorised by the Pool Operator to enter on any land or premises in which the Goods are for the time being sited so as to inspect and/or repair the Goods;

5.1.11. not by any act or default to render the Goods liable to any distress, execution or other legal process or suffer the appointment or the presentation of a petition for the appointment of an Administrator under the provisions of Part I I of the Insolvency Act 1986;

5.1.12. not to use or permit the Goods to be used for carrying or holding products that are incompatible with the material of construction of the Goods or in contravention of any statutory provision or regulation or in any way contrary to law in any jurisdiction or for any purpose for which the Goods are not designed or reasonably suitable;

5.1.13. not to sell or offer for sale, assign, mortgage pledge, sub-let or lend out the Goods or in any way part with the Goods or any interest in them but to keep the Goods in its own possession (legal and physical) or under its control and to prevent the creation of any charge or lien on them;

5.1.14 to procure by the terms of any mortgage, charge or debenture (whether specific or floating) of or in respect of the Hirer's assets no rights (whether present, future or contingent) are created or become exercisable in respect of the Goods. The Hirer acknowledged the right on the part of the Pool Operator to notify any mortgagee or chargee from time to time of the Hirer's assets of the existence of the Contract and of such of its terms as the Pool Operator shall consider appropriate.; to preserve and protect all identification marks and serial numbers on the Goods and, if requested by the Pool Operator, to affix or cause to be affixed to the Goods or any separate part or parts of them requested by the Pool Operator plates or other forms of marking indicating in terms approved by the Pool Operator that the Goods are the property of the Title Holder and are on lease to the Hirer. The Hirer shall ensure that such plates remain so affixed and that they are conspicuous and shall ensure that all identification marks, serial numbers and plates are at no time removed, obliterated, defaced or covered up;

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5.1.16 that the Goods (and all copyright and other rights in them) shall remain the property of the Title Holder and that the Hirer shall have no right or interest in the Goods otherwise than as a lessee, and shall at no time do or permit to be done any act or thing which might prejudice or jeopardise the rights of the Title Holder in and to the Goods.

5.1.17 to comply with any legislation or regulations in any applicable jurisdiction governing the transportation of the Goods and their contents and for payment of any duties thereon;

5.1.18 to supply to the Pool Operator all such information about the use or proposed use of the Goods (including without limitation as to their contents and destination) as the Pool Operator may require from time to time;

5.1.19 to make the Goods available for testing or retesting upon request by the Pool Operator in order for the Pool Operator to comply with any applicable legislation or regulations in any jurisdiction.

6. Pool Operator's Duties

6.1 During the Period of Hire the Pool Operator will be responsible for the repair only of any Wear and Tear which is reported to the Pool Operator by the Hirer.

6.2 the obligation of the Pool operator specified in Clause 6.1 shall not extend to the repair of any defect in or malfunction of the Goods resulting from accident, negligence, improper use or failure to maintain the Goods by the Hirer or any person permitted by the Hirer to use the Goods which shall (for the avoidance of doubt) be the responsibility of the Hirer.

6.3 Repair of wear and Tear shall be effected by the Pool Operator at such times as it shall in its discretion decide.

7. Risks and Insurance.

7.1 Risk of damage to or loss of the Goods shall pass to the Hirer at the time when the Pool Operator notifies the Hirer that the Goods are available for collection.

7.2 Notwithstanding delivery and the passing of risk or any other provisions of this Contract the Hirer shall not acquire any right in or property to the Goods.

7.3 The hirer shall throughout the Period of Hire or (if longer) for so long as the Goods remain in its possession or under its control (without prejudice to any liability of the Hirer to the Pool Operator) at its own expense comprehensively insure the Goods at the Replacement Cost with a reputable insurance company approved in writing by the pool Operator against all loss or damage (whether assumed under this Contract or otherwise) and also against all risks of third party liability arising out of the possession, presence or use of the Goods.

7.4 The Hirer will, upon request by the Pool Operator, at any time produce to the Pool Operator every such policy of insurance and the receipt for the current year's premium. If the Hirer fails to keep the Goods insured to the satisfaction of the Pool Operator or to produce any such policy or receipt as aforesaid the Pool Operator may, at the expense of the Customer, insure the Goods and the Hirer will pay **Pensteel Limited**



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the Pool Operator on demand any sums expended by the Pool operator for such purpose with interest at the Default Rate from the time of it having been expended until the date of actual repayment.

7.5 The interests of the Pool Operator in the Goods shall be noted on the policy of insurance which policy shall;

7.5.1. name the Pool Operator as loss payee;

7.5.2. not be capable of cancellation by the insurers (at the request of the Hirer or otherwise) other than by 30 days' prior notice in writing to the Pool Operator;

7.5.3. provide that the insurers shall waive any breach of warranty under the policy of insurance as against the Pool Operator.

7.6 The Hirer shall (so far as necessary) irrevocably authorise the insurers to pay the Pool Operator or such person as it directs all money payable under such insurance policy in respect of any loss or damage to all or any part of the Goods.

7.7 The Hirer irrevocably authorises the Pool Operator;

7.7.1 in the name and on behalf of the Hirer to make any claim or claims against the insurers under such insurance policy in respect of any loss of or damage to the Goods or any part of it and to settle or compromise such claim; and

7.7.2 to receive and to give a good discharge to the insurers for any money payable in respect of such claim or claims.

7.8 the Hirer shall not use or allow the Goods to be used for any purpose not permitted by the terms and conditions of any policy of insurance for the time being relating to the Goods nor do or allow to be done any act or thing whereby such insurance may be invalidated.

7.9 if all or any part of the Goods are lost or damaged the Hirer shall give immediate notice to the Pool Operator and shall make or assist in the making of any appropriate claim or claims under such insurance policy in such manner as the Pool Operator shall require and shall not in any manner settle or compromise any such claim without the prior written request of the Pool Operator.

7.10 if any of the Goods are lost, stolen or severely damaged beyond economic repair the Pool Operator shall apply any proceeds of insurance received by it at its option;

7.10.1. towards a replacement (and the cost of transporting such replacement to such location as the Pool operator shall specify) and such replacement shall be deemed to be included in this Contract for all purposes and the Hirer shall continue to be liable to pay Rental as if such loss had not taken place; or

7.10.2 in or towards payment to the Pool Operator of the sum necessary to compensate the Pool Operator for the loss of profit suffered as a result of the loss of such Goods.

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7.11. The Pool Operator shall have the right itself to repair or have repaired any of the Goods which are damaged. The Hirer will be responsible for the cost of repair. If the Pool Operator does not choose to do so the Hirer shall be liable at the Pool Operator's sole option and demand to reinstate or repair at its own expense (but subject to any insurance proceeds) Goods which have not become a total loss and shall continue to pay Rental in respect of such Goods during such reinstatement or repair.

7.12 The Hirer will be liable to pay the Pool Operator any amount deducted by the insurers by way of excess and (subject to the application of insurance proceeds under Clause 7.10.2.) shall indemnify the Pool Operator against all and any loss suffered by it in consequence of the loss or destruction of the Goods or any part of them.

8. Liability for the Goods.

8.1 The Hirer acknowledges that the Pool Operator's charges to the Hirer are determined on the basis of the exclusions from and limitations of liability contained in this Contract and agrees that no condition warranty or representation of any kind has been or is given or made by the Pool Operator its servants or agents with respect to or in respect of the Goods other than a warranty that;

8.1.1. the Title Holder is beneficial owner of the Goods;

8.1.2. for so long as no breach of the Contract has occurred the Pool Operator will not interfere with the Hirer's possession use or enjoyment of the Goods and will not derogate from the rights granted to the Customer; and

8.1.3. the Goods are of satisfactory quality;

8.2. If the Pool Operator is in breach of the warranty in Clause 8.1.2. then (at the Pool Operator's discretion) it may terminate this Contract or provide the Hirer with replacement Goods or parts and the Pool Operator shall no further liability for such breach whether in contract, tort, negligence or otherwise.

8.3 The Hirer agrees that the Pool Operator will not be liable for any delay in providing or failure to provide the Goods, or for any interruption or loss of service or use or for any loss of business or other consequential damage or any damage whatsoever and howsoever caused.

8.4 Nothing in this Contract shall exclude any liability of the Pool Operator in respect of death or personal injury resulting from the Pool Operator's negligence or that of its employees, for fraudulent misrepresentation or for damage for which the Pool Operator is liable to the Hirer under Part 1 Consumer protection Act 1987 or equivalent. If any event occurs which the Pool Operator may be held responsible for pursuant to this Clause 8.4 the Hirer must give immediate notice to the Pool Operator (by telephone) confirmed by full details in writing. The Hirer must not make any admissions or otherwise accept liability to any person or make any offers or promises of payment without the prior written consent of the Pool Operator.

8.5 The Hirer will indemnify the Pool Operator from and against all actions, claims demands, proceedings (in each case whether civic or criminal), costs, expenses, losses or liabilities of any nature which may be made or brought against or suffered or incurred by the Pool Operator of the Title Holder by reason of any loss, injury, death or damage caused or alleged to be caused to any person or property by or arising or alleged to arise directly or indirectly out of the control, operation, use, removal, maintenance,
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repair or leasing of or any defect in the Goods and against all costs charges and expenses of and incidental to it.

8.6 The indemnity in Clause 8.5 will apply:

8.6.1. whether or not the leasing constituted by this Contract shall have expired.

8.6.2. however the liability arises;

8.6.3. regardless of the time when it shall arise or shall be alleged to arise; and

8.6.4. whether or not the Goods are in the possession or control of the Hirer.

8.7 Nothing in this Contract shall impose any obligation on the Hirer to indemnify the Pool Operator against any liability arising in respect of death or personal injury resulting from the Pool Operator's negligence or that of its employees.

8.8 Subject to the other provisions of this Clause 8, and to the maximum extent permissible in law all conditions and warranties which are to be implied by statute or otherwise by general law into this Contract or relating to the Goods are hereby excluded.

9. Force Majeure.

9.1 The Pool Operator shall not be liable to the Hirer in any manner or be deemed to be in breach of this Contract (subject to Clause 8) because of any delay in performing or any failure to perform any of the Pool Operator's obligations under this Contract if the delay or failure was due to any cause beyond the Pool Operator's reasonable control.

9.2 Without prejudice to the generality of Clause 9.1 the following shall be included as causes beyond the Pool Operator's reasonable control.

9.2.1. governmental actions or requests, war, threat of war, riot, civil disturbance, sabotage or requisition;

9.2.2. Act of God, fire, flood, epidemic or accident:

9.2.3. import or export regulations or embargoes;

9.2.4. strikes, lockouts, trade labour disputes or troubles including disputes involving the Pool Operator's work-force;

9.2.5. inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour or other manufacturing facilities.

9.2.6. acts of the Hirer, its employees, agents or anyone for whom it is vicariously liable.

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10. Termination

10.1 The Pool Operator may terminate this Contract forthwith by notice in writing to the Hirer if the Hirer is in breach of this Contract and shall have failed (where the breach is capable of remedy) to remedy the breach within 30 days of the receipt of a request in writing from the Pool Operator to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of this Contract.

10.2 In addition to the powers of termination contained in Clause 10.1 the Pool Operator shall be entitled to terminate this Contract forthwith by notice, in writing, to the Hirer on any of the following grounds:-

10.2.1. that the Hirer;-

10.2.1.1. becomes the subject of a voluntary arrangement under section 1 Insolvency Act 1986:

10.2.1.2. is unable to pay its debts within the meaning of section 123 Insolvency Act 1986:

10.2.1.3. has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income;

10.2.1.4. has passed a resolution for its winding up;

10.2.1.5. has a petition presented to any court for its winding-up or for an administration order; or

10.2.1.6. fails to pay any Rental or other sums payable under this Contract in full within 14 days after they shall fall due;

10.2.1.7. does or causes to be done or permits or suffers any act or thing whereby the Pool Operator's or the Title Holders' rights in the Goods are prejudiced or put in jeopardy;

10.2.1.8 has any indebtedness or obligation or the repayment of any borrowed money which becomes due and payable before its specified monthly date and is not paid when due and for 30 days from that date;

10.2.1.9. has any security created by any mortgage or charge created by the Hirer which becomes enforceable whether or not the mortgage or the chargee takes steps to enforce it.

10.2.1.10. has anything similar or analogous happen to it in any other jurisdiction.

10.2.2. if any distraint, execution or other process is levied or enforced on any property of the Hirer and is not paid out, withdrawn or discharged within 14 days;

10.2.3. that the Hirer has in the reasonable opinion of the Pool Operator ceased or threatened to cease to trade;

10.2.4. without prejudice to Clause 10.1 if the Hirer is not fulfilling its obligations under this Contract to the reasonable satisfaction of the Pool Operator

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10.2.5. that there has been a change in who has control of the Hirer.

10.3 The Hirer shall be solely responsible for the costs of cleaning, removal and transport of the Goods on termination or expiry of the Period of Hire.

10.4 Until such time as the Goods have been returned to the Pool Operator and a Clean-Out Certificate has been issued the Period of Hire will continue and the Hirer will continue to pay Rental and all other sums due under this Agreement.

10.5 Upon the termination of the Hire of any of the Goods whether under Clause 10.1 or 10.2 or otherwise the Hirer will:

10.5.1. return or re-deliver such Goods to the Depot at the Hirer's risk and cost, in good working order, repair and condition (Wear and Tear only excepted) and so that if the Hirer shall fail to return or re-deliver such Goods within 4 days of being requested to do so in writing by the Pool Operator the Pool Operator may forthwith and without any notice retake possession of such Goods and for this purpose shall be entitled freely to enter into and upon any premises occupied by or under the control of the Hirer;

10.5.2. be solely responsible for ensuring the safekeeping supervision and custody of the Goods until they are returned to or repossessed by the Pool Operator;

10.5.3. without prejudice to the pool Operator's right to claim damages, become immediately liable to pay to the Pool Operator an amount comprising the aggregate of:

10.5.3.1. all arrears of Rental and other money accrued due and unpaid under the terms of the Contract together with interest on it at the Default Rate and otherwise on the basis specified in Clause 13;

10.5.3.2. any costs and expenses incurred by the Pool Operator in locating, repossessing, recovering or restoring the Goods or collecting any payments due under the Contract or otherwise in obtaining the due performance of the obligations of the Hirer under the Contract;

10.5.3.3. the aggregate of all Rental that would have been payable during the unexpired term of the Period of Hire adjusted by such amount as the Pool Operator shall conclusively certify is necessary, taking account of the early receipt of such sum; and

10.5.3.4. all and any other sums due under this Contract.

10.6 if the Hirer fails to comply with or commits a breach of any provision of this Contract the Pool Operator may, without being in any way obliged to do so or responsible for doing so and without prejudice to the ability of the Pool Operator to treat that non-compliance as an event entitling it to terminate under Clause 10.1, effect compliance on behalf of the Hirer, whereupon the Hirer will become liable to pay immediately any sums expended by the Pool Operator together with all costs and expenses (Including legal costs on a full indemnity basis) in connection with such compliance.

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11. Return of goods.

11.1 Upon expiry of the Period of Hire (and provided that none of the events in Clause 10.1 or 10.2 have occurred) the Hirer shall return or re-deliver the Goods to any of the Depots at the Hirer's risk and cost in good working order, repair and condition (Wear and Tear only excepted).

11.2 Until such time as the Goods have been returned to a Depot and a Clean-Out Certificate has been issued the Period of Hire will continue and the Hirer will continue to pay Rental and all other sums due to the Pool Operator.

11.3 If the Goods are returned to the Pool Operator prior to the expiry of the Period of Hire then the Hirer shall pay to the Pool Operator the Early Return Payment specified in the Schedule before a Clean-Out certificate shall be issued and until a Clean-Out Certificate has been issued the Period of Hire will continue and the Hirer will continue to pay Rental and all other sums due to the Pool Operator.

12. Cleaning and Repair of the Goods.

12.1 Whether this Contract is terminated pursuant to Clause 10 or the Goods are returned pursuant to Clause 11 the Period of Hire will be deemed to continue and Rental and all other sums due will continue to be payable by the Hirer until the Goods are returned to the Depot in a clean undamaged condition with no Pitting Corrosion or any other Damage and a Clean-Out Certificate has been issued.

12.2 If the Goods require cleaning internally or externally or if any Damage to the Goods (including Pitting Corrosion) has to be repaired or rectified by the Pool Operator the Hirer shall be responsible for the payment of all costs and expenses incurred by the Pool Operator in respect of cleaning, rectifying or repairing the Goods.. The Pool Operator shall have sole discretion as to what cleaning, testing and repair work is required before a Clean-Out certificate is issued.

13. Interest.

13.1 Any payment due from the Hirer to the Pool Operator shall be treated as paid and received on the date on which the Pool Operator obtains value for such payment.

13.2. Any money due or payable to the Pool Operator under the Contract shall bear interest at the Default Rate (as well before as after any judgement) from the date such money is due, expended or incurred until payment.

14. Reimbursement of expenses.

14.1 The Hirer shall reimburse the Pool Operator on demand for all expenses (including legal fees and Value Added Tax which is not recoverable) incurred by the Pool Operator in connection with or incidental to:-

14.1.1 any amendment, variation (including, without limitation, rental or other adjustments) or waiver from time to time of any of the provisions of this Contract or any consent or notice given from time to time under this Contract; and/or

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14.1.2. the protection, preservation or enforcement of any right or remedy conferred upon the Pool Operator under this Contract or by law, or any action to recover possession of the Goods or any part of them whether or not any such action progresses to judgement.

15. Confidentiality.

15.1. The Hirer undertakes to keep all information of a commercially sensitive nature arising hereunder or provided to it by the Pool Operator strictly confidential. Such information shall (for the purpose of clarification not limitation) include details of cost make up, price structures, drawings, specifications, designs, process data, performance data or any other matter relating to the subject matter of this third party.

15.2 The hirer shall take the same standard of care with respect to such information as it takes with its own information of a similar nature and shall not pass such information to any third party without the prior written consent of the Pool Operator.

16. General.

16.1 Each right or remedy of the Pool Operator under this Contract is without prejudice to any other right or remedy of the Pool Operator whether under this Contract or not.

16.2 Any provision of this Contract which is held by any competent authority to be invalid, void, voidable or unenforceable (in whole or in part) shall to the extent of such invalidity, voidness, violability or unenforceability be deemed severable and the other provisions of this Contract and the remainder of such provision shall not be affected.

16.3 Failure by the Pool Operator to enforce or partial enforcement of any provision of this Contract will not be construed as a waiver of any of its rights under this Contract.

16.4 A waiver by the Pool Operator of any breach of this Contract by the Hirer will not be construed as a waiver of any subsequent breach of it or any other provision.

16.5 The Pool Operator may assign, license or sub-contract all or any part of its rights or obligations under this Contract without the Hirer's consent.

16.6 This Contract is personal to the Hirer who may not assign, license or subcontract all or any of its rights or obligations under this Contract without the Pool Operator's prior written consent.

16.7 The formation, construction, performance, validity and all aspects of this Contract are governed by English law and the Hirer submits to the exclusive jurisdiction of the English Courts.

16.8 The Hirer shall not without the prior consent of the Pool Operator communicate in any person whatsoever any of the methods in use for the Goods or any operating instructions or technical data relating to them except to such employees of the Hirer employed to use them.

16.9 The Pool Operator has entered into a Contract with the Title Holder and accordingly the Pool Operator may perform any of its obligations or exercise any of its rights by itself or through any other pool
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operator who has entered into a similar Contract with the Title Holder which (inter alia) regulates the rights and duties of the Pool Operator in relation to the Goods, provided that any act or omission of any such member shall be deemed to be the act or omission of the Pool Operator.

17. Communications.

17.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by first class post or sent by facsimile transmission;

17.1.1 (in the case of communications to the Pool Operator) to its registered office or such changed address as shall be notified in writing to the Hirer by the Pool Operator; or

17.1.2. (in the case of the communications to the Hirer) to the registered office of the addressee.

17.2 Communications shall be deemed to have been received.

17.2.1. if sent by first class post, 2 Business Days after posting (exclusive of the day of posting);

17.2.2. if delivered by hand, on the day of delivery;

17.2.3. (if sent by facsimile transmission on a working day prior to 2pm at the time of transmission otherwise on the next Business Day.

17.3. In proving service:-

17.3.1. by delivery by hand, it shall be necessary only to produce a receipt for communications signed by or on behalf of the addressee;

17.3.2. by post, it shall be necessary only to prove that the communication was contained in any envelope which was addressed and posted in accordance with Clause 17.1 by facsimile transmission, it shall be necessary only to produce the sender's copy and a facsimile message confirmation slip showing the communication was sent in accordance with Clause 17.1.