

**KHANSAHEB SYKES
STANDARD TERMS & CONDITIONS OF HIRE**

1. INTERPRETATION

In these Conditions the following expressions shall have the following meanings:

"Confidential Information"

means any and all communications and all information whether written, visual or oral and all other materials of a confidential nature supplied by one party to the other;

"Contract"

means the contract between KS and the Customer arising on KS's acceptance of the Order and which incorporates these Conditions and the Order;

"Customer"

means the person, firm, company or other organisation as detailed in the Order, which is requesting the hire of the Goods;

"Goods"

means the goods as detailed in the Order to be hired by the Customer from KS;

"KS"

means the appropriate Khansaheb Sykes company from which the Customer is hiring the Goods;

"Market Value"

means the selling price of the Goods in new condition as is determined by KS in its absolute discretion by reference to its current list prices or the list prices of the manufacturer of the Goods;

"Order"

means a request to hire Goods from KS (accompanied by a purchase order number(s)) submitted by the Customer;

"Price"

means the price payable by the Customer to KS for the hire of the Goods, as notified by KS; and

"Specification"

means KS's standard specification for the Goods.

- 1.1 The singular in all cases shall imply the plural and vice versa.
1.2 The headings in these Conditions are for convenience only and shall not affect the interpretation of the Conditions.

2. GENERAL

- 2.1 These Conditions shall be incorporated into and shall apply to all quotations, offers and all Orders accepted by KS for the hire of the Goods.
2.2 Except as otherwise provided in these Conditions, all other terms, conditions, warranties and representations (whether oral or in writing) are excluded from the Contract between KS and the Customer and supersede any and all prior promises, representations, undertakings or implications.
2.3 These Conditions shall prevail over any and all terms and conditions that the Customer may purport to apply.
2.4 No statement, illustration or drawing in any circular, advertisement, trade literature or other such communication shall be deemed to imply any representation, warranty or condition and such statements, illustrations or drawings are for guidance purposes only and shall not form part of the Contract.
2.5 Where KS accepts an Order for Goods, KS agrees to hire the Goods to the Customer for the period stated in the Order (the "Hire Period") subject to these Conditions.
2.6 The Hire Period shall commence when KS delivers the Goods to the Customer.

3. PRICE

- 3.1 All prices are exclusive of any applicable taxes or duties, which shall be payable by the Customer at the then prevailing rate. KS has the right to vary the price for the hire of the Goods from time to time on reasonable notice to the Customer.
3.2 If KS agrees to deliver the Goods otherwise than at KS's premises the Customer shall pay all packaging, transportation and insurance costs and other charges incurred by KS in making or arranging such delivery.

4. PAYMENT

- 4.1 Unless otherwise agreed by KS in writing, the Price (or such portion of the Price as is set out in the invoice) shall be due and payable thirty (30) days after the date of invoice. The time for payment shall be of the essence of the Contract.
4.2 In the event of default of payment by the Customer, KS shall be entitled, without prejudice to any other right or remedy:
4.2.1 without notice to suspend or cancel any or all further deliveries under the Contract and under any other contracts between KS and the Customer then current;
4.2.2 to charge reasonable debt recovery costs and to charge interest on any amount outstanding at the rate of five percent (5%) per annum, such interest to accrue on a daily basis from the due date for payment until receipt of payment in full and cleared funds; and
4.2.3 to serve notice on the Customer requiring the Customer immediately to deliver up the Goods to KS.
4.3 All payments made by the Customer to KS under the Contract shall be made free from any restriction or condition and without deduction or withholding on account of any other amount and/or claim, whether by way of set-off or otherwise and whether such amount and/or claim is connected to any sale or Order under these Conditions or otherwise. No payment shall be deemed to have been received until KS has received full and cleared funds.

5. DELIVERY

- 5.1 Time of delivery shall not be of the essence of the Contract. Stated delivery times are an estimate only and, subject to the other provisions of these Conditions, KS will not be liable for any loss (including loss of

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profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods nor will any delay entitle the Customer to terminate the Contract.

- 5.2 If the Customer refuses or fails to take delivery of the Goods within the Customer's normal working hours on the date of delivery, or if KS is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, KS may store the Goods and the Customer shall in addition to the Price payable pay all related costs and expenses (including without limitation, the costs for storage and insurance) and additional delivery costs incurred by KS and if the Customer fails to take delivery of or to collect the Goods (as appropriate) after seven (7) days following the date of delivery, KS may terminate the Contract and recover damages.

- 5.3 The Customer shall notify KS of any defect or discrepancy in the Goods within three (3) days of receipt of the Goods. If a complaint is not made to KS in accordance with this Clause 5.3, the Goods shall be deemed to have been delivered in accordance with the Contract and the Customer shall be bound to pay the Price.

6. RISK AND TITLE

- 6.1 During the Hire Period, the Customer shall be entitled to possession and use of the Goods. Title to the Goods shall remain with KS at all times.
6.2 Risk in the Goods shall pass to the Customer (so that the Customer is then responsible for all loss or deterioration of the Goods or for any damage occurring) from the commencement of the Hire Period and risk in the Goods shall remain with the Customer until receipt of the returned Goods by KS. The Customer shall be responsible for:
6.2.1 ensuring that the Goods are properly maintained and used; and
6.2.2 ensuring that the Goods are made available for collection by KS on or immediately following the end of the Hire Period.
6.3 If the Customer fails to return the Goods on or immediately following the end of the Hire Period, KS shall have the right to charge the Market Value for the Goods.

7. DAMAGE TO GOODS

- 7.1 Should KS consider in its reasonable opinion that any damage to the Goods is caused by improper use or by malicious or wilful damage during the Hire Period, KS reserves the right to :
7.1.1 invoice the Customer for the costs of repairs to the Goods including any replacement parts and labour; or
7.1.2 (where in KS's opinion the Goods are beyond economical repair) invoice the Customer for the Market Value for the Goods in question and upon payment of such invoice, title in the damaged Goods shall pass to the Customer.
7.2 The Customer agrees to pay the full amount of any invoice received in accordance with Clause 7.1 within fifteen (15) days of receipt of such invoice.

8. GUARANTEE

- 8.1 KS warrants to the Buyer that the Goods conform in all material respects with the Specification.
8.2 Any and all warranties (including without limitation, relating to fitness for a particular purpose, satisfactory quality, and description) whether oral or written, express or implied by any applicable law, trade custom and industry practice are excluded to the fullest extent possible.
8.3 If the condition of the Goods delivered is such as might or would (subject to these Conditions) entitle the Customer to claim damages or terminate the Contract or reject the Goods the Customer shall not then do so but shall notify KS and KS will, at its sole option, either repair or supply satisfactory substitute Goods free of cost and within a reasonable time.
8.4 If KS does so repair the Goods or supply satisfactory substitute goods under Clause 8.3, the Customer shall be bound to accept such repaired or substituted goods and KS shall be under no liability in respect of any loss or damage of whatever nature arising from the initial delivery of the defective Goods.
8.5 In the case of Goods not manufactured by KS, KS gives no assurance or guarantee that the use of the Goods will not infringe the patent, copyright or other intellectual property right of any third party.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions excludes or limits the liability of KS for death or personal injury caused by KS's negligence or for fraudulent misrepresentation or any other liability or loss in respect of which liability cannot by applicable law be limited.
9.2 Subject to Clause 9.1 above, the total liability of KS for any one claim or the aggregate of linked claims under or in connection with this Contract shall be limited to and shall not in any circumstances exceed a sum equal to the Market Value of the Goods that are the subject of the claim.
9.3 KS shall not be liable for the following losses, whether arising from breach of contract, tort (including negligence), or otherwise, and whether or not flowing directly, indirectly, or as a consequence of such breach, tort or other cause:
9.3.1 loss of profit;
9.3.2 loss of anticipated savings;
9.3.3 loss of anticipated profits;
9.3.4 loss of anticipated contracts;
9.3.5 loss of reputation or goodwill;
9.3.6 any wasted expenditure; or
9.3.7 economic loss.
9.4 The sub-clauses of Clause 9.3 are intended by the Customer and KS to be severable and both parties agree that such limitations of liability are reasonable in all the circumstances.
9.5 The Customer shall only be entitled to claim in relation to defects or discrepancies in the Goods as supplied if a written complaint is made to KS within three (3) days of receipt of the Goods, and KS is given an opportunity to inspect the Goods and investigate any complaint before any use of or alteration to or interference with the Goods. If a complaint

- is not made to KS in accordance with this Clause 9.5, the Goods shall be deemed to have been delivered in all respects in accordance with the Contract and the Customer shall be bound to pay the Price
- 9.6 The Customer shall ensure that it holds appropriate insurance to cover its liabilities under the Contract and in respect of any liability that could reasonably arise from possession and/or use of the Goods.
10. **RETURNING GOODS**
- 10.1 The Customer shall, when returning the Goods to KS for whatsoever reason, clean and decontaminate the Goods in accordance with accepted good industry practice. The Customer shall certify in writing to KS that such cleaning and decontamination has been undertaken (a "Certificate").
- 10.2 Where KS recovers the Goods or the Goods are returned to KS by the Customer and the Customer fails to provide a Certificate, then KS may arrange for the Goods to be cleaned and decontaminated on behalf of the Customer. In such instance, the Customer shall reimburse KS for any costs incurred by KS as well as KS's reasonable administration costs in dealing with the matter. KS shall invoice the Customer for this liability.
11. **CUSTOMER'S OBLIGATIONS**
- 11.1 The Customer shall:
- 11.1.1 keep the Goods at all times in its possession or control and on demand inform KS of the whereabouts of the Goods;
- 11.1.2 not repair, modify, alter or otherwise tamper with the Goods;
- 11.1.3 ensure that the Goods are only used by properly trained personnel;
- 11.1.4 be absolutely responsible for any loss of the Goods whether or not such loss is occasioned by the Customer's act or default and fully indemnify KS against all such loss;
- 11.1.5 give immediate notice in writing to KS of any damage to the Goods or any theft, seizure or loss of possession of the Goods or of any change to the Customer's address;
- 11.1.6 permit KS, its servants or agents at all reasonable times upon reasonable notice to inspect and test the condition of the Goods and afford to KS and its servants or agents facilities and access for this purpose to any premises in or upon which the Goods may be kept;
- 11.1.7 keep the Goods free from distress, execution or other legal process and not create or allow to be created any lien for repairs or otherwise over the Goods;
- 11.1.8 not interfere or allow interference with any name, nameplate, identification number, trade mark or other identification mark on the Goods;
- 11.1.9 punctually pay all outgoing payments payable in respect of the Goods;
- 11.1.10 not use the Goods or permit the Goods to be used for any unlawful purpose or otherwise contrary to law; and
- 11.1.11 pay to KS on demand all expenses and costs, legal or otherwise, incurred by KS in applying for or enforcing payment of any sums payable by the Customer to KS hereunder or in ascertaining the whereabouts of the Customer or of the Goods or in recovering possession of the Goods from the Customer or any other person (including any payment made by KS in discharge or satisfaction of any lien or alleged lien on the Goods).
12. **RECOVERY OF GOODS**
- 12.1 KS shall be entitled to require the Customer to immediately deliver up the Goods to KS and/or KS may immediately terminate the Contract upon the occurrence of any of the following events:
- 12.2 any encumbrancer takes possession of or a receiver, administrative receiver, or similar officer is appointed over any of the property or assets of the Customer;
- 12.3 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or has a bankruptcy trustee appointed or goes into liquidation or is declared bankrupt or has a resolution for its winding up passed;
- 12.3.1 the Customer in the reasonable opinion of KS is unable to pay its creditors as and when its debts fall due;
- 12.3.2 anything analogous to any of the events in Clauses 12.2 or 12.3 occurs under the law of any jurisdiction in relation to the Customer;
- 12.3.3 the Customer ceases or threatens to cease to carry on business; or
- 12.3.4 the Customer is in breach of any of its obligations under the Contract.
- 12.4 The Customer irrevocably licences KS, its officers, employees and agents to enter upon any premises of the Customer, with or without vehicles, for the purpose of recovering Goods pursuant to Clause 12.1.
13. **ATTENDANCE ON SITE**
- 13.1 If KS attends, or arranges for an attendance to be made, at the Customer's premises or the premises of any third party for any reason connected with the Contract, the Customer shall indemnify KS in respect of all claims made or proceedings taken against KS (and associated legal costs incurred by KS) by any person, firm or company, including employees of KS, or of the Customer or of any contractor employed by the Customer (or their personal representatives), whether in respect of death, personal injury or damage to property arising directly or indirectly from the attendance at such premises.
14. **INTELLECTUAL PROPERTY**
- 14.1 The Customer acknowledges and agrees that all patents, copyright, moral rights, business and trade names, trade marks (registered or unregistered), design rights (registered or unregistered), know-how and any and all other intellectual property rights in the Goods and any documentation relating to the Goods, together with any enhancements or improvements shall vest in KS and/or its licensors, free of charge. The Customer shall have no rights in respect of any intellectual property rights belonging to KS nor any goodwill associated therein.
- 14.2 All claims for alleged infringement of patents, trade marks, registered designs, design right or copyright received by the Customer relating to

the Goods must be notified immediately to KS. If requested by KS, KS shall be entitled to have conduct of any proceedings relating to any such claim in such manner as KS thinks fit and the Customer will provide to KS such reasonable assistance as KS may request.

15. **CONFIDENTIALITY**

- 15.1 Each party shall at all times keep all Confidential Information supplied by the other party confidential and will not disclose any such information to any third party other than in the proper performance of its obligations under this Contract. Each party agrees that this obligation shall continue in force without limit in point of time.
- 15.2 The restriction imposed by Clause 15.1 shall not apply to the disclosure of any Confidential Information:
- 15.2.1 to such extent as is necessary for the purposes contemplated by these Conditions and with the other party's prior consent;
- 15.2.2 as is required by any applicable law or as is requested by any competent court; or
- 15.2.3 where it is public knowledge at the date of disclosure or can be shown by the disclosing party to have been known prior to such disclosure, provided that such disclosure does not constitute a breach of these Conditions.

16. **FORCE MAJEURE**

- 16.1 KS shall not be liable for any failure to perform its obligations under the Contract for any reason whatsoever outside its reasonable control, including without limitation, strikes, riots, lock-outs or other industrial action (whether involving KS's employees or those of a third party) or governmental restrictions of any kind, suspension or loss of means of transport, labour and/or materials shortages, legislation or regulations of any kind, acts of God, fire, flood, or other extraordinarily severe weather conditions, failure (in whole or in part) of any power or energy supply or plant and machinery. Any such failure or delay shall not affect the obligation of the Customer to pay the Price for Goods already delivered.

17. **GOVERNING LAW AND ARBITRATION**

- 17.1 These Conditions and the Contract (and any non-contractual obligations arising out of or in connection with these Conditions and the Contract) shall be governed by and interpreted in accordance with the laws of the United Arab Emirates.
- 17.2 The parties agree that any dispute or difference arising out of the formation, performance, interpretation, nullification, termination or invalidation of these Conditions or the Contract or related thereto in any manner whatsoever, shall be settled by arbitration in accordance with the provisions set forth under the Dubai International Arbitration Centre Arbitration Rules. The tribunal shall comprise of one or three arbitrators as determined by the party referring the dispute or difference to arbitration. The language of the arbitration shall be English. The place of arbitration shall be Dubai. The arbitrator shall expressly apply the law of the United Arab Emirates to the exclusion of all other choices of law.

18. **MISCELLANEOUS**

- 18.1 The Customer may not assign, sub-contract or in any way dispose of or transfer its rights or obligations under the Contract without the prior written consent of KS. KS shall be free to assign, sub-contract and/or transfer any of its rights or obligations under the Contract to any of its associated companies or to a third party.
- 18.2 Any notice required to be served pursuant to these Conditions shall be served at such address as each party may from time to time notify to the other and shall be served by courier, by email or fax. Any such notice served by post shall be deemed to have been served in the case of a destination in the UAE two (2) days after the date of despatch and seven (7) days after the date of despatch to any other destination. In the case of service by fax such notice shall be deemed to have been served when the addressee's machine acknowledges receipt thereof and in the case of email when the email is available to be read in the recipient's inbox.
- 18.3 Any term of these Conditions which is or may be void or unenforceable shall, to the extent of such invalidity, be severable and shall not affect the other provisions or terms or the remainder of the affected provision of these Conditions.
- 18.4 Failure by either party to exercise any right to enforce these Conditions or any term of the Contract relating to any breach of these Conditions or the Contract shall not be construed as a waiver of any such breach or any subsequent breach of the same provision or any other provision.
- 18.5 Except as otherwise provided in these Conditions or the Contract, a person who is not a party to the Contract shall have no rights to enforce any term of these Conditions or the Contract.
- 18.6 Nothing in these Conditions or the Contract will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between the parties or as authorising either party to act as agent for the other.

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