

TERMS AND CONDITIONS OF LONG TERM HIRE (to be used with Long Term Hire Contract form)

1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (i) "Company" means Andrews Air Conditioning and Refrigeration Limited its successors and assigns.
- (ii) "Hirer" means the person or organisation identified as such in the Agreement.
- (iii) "Equipment" means the plant or equipment or installation identified in the Agreement.
- (iv) "Hire Period" means the period identified as such in the Agreement.
- (v) "Monthly Hire Rate" means the rate identified as such in the Agreement.
- (vi) "Monthly Payment Date" means the date identified as such in the Agreement.
- (vii) "Agreement" means the agreement between the Company and the Hirer set out on the Company's standard form for Long Term Hire Contracts.

2. HIRE, COMMENCEMENT AND TERM

2.1 The Company lets and the Hirer takes the equipment on hire for the duration of the hire period.

2.2 The hire shall commence on the date stated in the Agreement and shall continue for the hire period and thereafter unless terminated by not less than 6 calendar months prior notice to be given to the Company in writing to take effect no earlier than the date of expiry of the hire period

3. FINANCIAL

3.1 The Hirer shall pay to the Company punctually and without prior demand:-

- (i) An initial payment equal to three times the Monthly Hire Rate together with VAT thereon, which sum shall be due on the date of signing of this agreement the final date for payment of which being seven days thereafter. The initial payment shall be held by AAR as security against the last three Monthly Payments which shall each be adjusted to take account of the initial payment.
- (ii) The Monthly Hire Rate together with VAT thereon which sum shall be due on each Monthly Payment Date commencing immediately following the signing of this agreement the final date for payment of which shall be seven days after each Monthly Payment Date respectively.
- (iii) Any other charge or sum together with VAT thereon which may become payable from time to time under this agreement which sums shall become due on the twentieth day following their date of invoicing, their latest dates for payment being respectively seven days thereafter.

3.2 The Hirer hereby gives notice to the Company that it will

- (i) in respect of the initial payment under **Clause 3.1 (1)** make payment to the company of three times the Monthly Hire Rate in accordance with **Clause 3.1 (1)** and;
- (ii) in respect of each monthly payment under **Clause 3.1 (2)** make payment of the amount of the Monthly Hire Rate in accordance with **Clause 3.1 (2)**.
- (iii) In respect of any payment to become due under **Clause 3.1 (3)**, the Hirer shall, not later than five days after such payment becomes due, give notice to the Company specifying the amount of such payment and the basis upon which it has been calculated.

3.3 (i) In this clause "the index" means the BEAMA Labour Cost Indices published by British Electrotechnical and Allied Manufacturers Associations.

- (ii) On each anniversary of the commencement date the Monthly Hire Rates shall be increased by multiplying it by the last published index immediately preceding the anniversary date and dividing the result by the last published index immediately preceding the date of this agreement, and the resultant sum shall then become the Monthly Rate.
- (iii) In the event of any change after the date of this agreement in the reference base used to compile the index the figure taken to be shown in the index after the change shall be the figure which would have been shown in the index if the reference base current at the date of this agreement had to be retained.

3.4 If the initial rental or any monthly rental or any other charge or sum which may become due from time to time under this agreement shall be unpaid after becoming due interest shall be charged on such amounts as are due and unpaid (both after as well as before any judgement) at a rate of 4% per annum above the base rate of National Westminster Bank plc from time to time prevailing from the date on which any such amount became due until payment is made in full to the Company. Such obligation shall be independent and shall not merge with any judgement.

4. WITHHOLDING OF PAYMENT

4.1 The Hirer shall not withhold any or any part of any payment due to the Company after the final date for such payment as provided by **Clause 3.1 (1) and (2)** unless the Hirer shall have given to the Company, not later than fourteen days before that final date for payment, a written notice to the Company specifying the amount that the Hirer proposes to withhold and the grounds for such withholding. In the event that the Hirer relies upon more than one ground, each ground and the amount withheld as being attributable to each such ground shall be specified in the notice.

5. INSTALLATION

5.1 The Company shall deliver the equipment to the Hirer's premises at the address stated overleaf and shall install it in working order.

6. SERVICING AND ADJUSTMENTS

- 6.1 The Company shall carry out routine servicing and maintenance of the equipment and repair or replace any component failing in normal use, to the manufacturer's specification and in accordance with the Company's service literature provided to the Hirer
- 6.2 The Hirer shall not interfere with or adjust the equipment in any way but on any fault occurring shall immediately notify the Company which shall undertake all necessary repairs.

7. INSURANCE

- 7.1 The Hirer shall insure the equipment and keep it insured throughout the period of this agreement under a fully comprehensive policy of insurance free from restriction or excess to its full replacement value against fire theft accidental damage and other risk against which it is commercially prudent to insure in the joint names of the Company and the Hirer with an insurance Company approved by the Company and shall ensure that the Company's interest is noted on the policy.
- 7.2 The Hirer shall punctually pay all premiums and make any other payments necessary to effect and maintain the policy, produce the policy and the receipt for each premium to the Company on demand and shall not do or permit or suffer to be done any act which might invalidate such insurance.
- 7.3 If the equipment is damaged and the damage can be made good, all insurance moneys paid under the policy shall be applied in making good the damage. If the equipment is lost, stolen or damaged beyond repair then such insurance moneys shall be paid to the Company without

prejudice to any right or remedy of the Company in respect of any breach by the Hirer of its obligations under this agreement.

8. DAMAGE TO EQUIPMENT

- 8.1 The Hirer accepts full responsibility for and shall indemnify the Company against all loss and damage to the equipment not covered by a policy of insurance as aforesaid or to property of and injury to any third party other than loss damage or injury caused by the negligence of the Company and the case of damage to the equipment which is not capable of repair the Hirer shall pay the Company the full replacement value thereof.
- 8.2 If the equipment is lost, stolen, destroyed or so damaged as to be incapable of economic repair the Hirer shall pay to the Company in addition to any sums then due the balance of hire rentals payable under this agreement during the hire period less an amount representing:
- (i) the maintenance costs and depreciation which would otherwise have been incurred between the date of such damage and the expiry of the hire period; and
 - (ii) the value of accelerated payment of such discounted hire rentals.

9. NOT TO SELL

- 9.1 The Hirer shall not, during the durations of the hire, sell or offer for sale, mortgage, pledge, underlet, lend or otherwise deal with or part with the possession of the equipment or any part of it without the Company's previous written consent.
- 9.2 The Hirer shall duly and punctually pay all rent taxes and outgoings payable by the Hirer in respect of the premises where the equipment is installed and protect the Company against any distress, execution or seizure of the equipment and compensate the Company in full on demand for all losses and expenses incurred by the Company in respect thereof.

10. OBLIGATIONS OF THE HIRER

- 10.1 The Hirer shall take all reasonable precautions to ensure that the equipment can be maintained on the premises to which it is delivered and observe all necessary safety regulations and legal requirements relating to the equipment but shall not move the equipment from the premises to which it is delivered without the Company's prior written consent.
- 10.2 The Hirer shall permit the Company at all reasonable times to have access and reasonable facilities to inspect, service, repair or replace the equipment during the Company's normal business hours.

11. NAME PLATE

- 11.1 The Company may fix plates or other marks to the equipment indicating that the equipment is the Company's property and the Hirer shall not obliterate deface or cover them up.

12. THIRD PARTY INTERESTS

- 12.1 The Hirer shall:-
- (i) Ensure that the equipment does not become a fixture to any property in which it is installed.
 - (ii) Ensure that the equipment does not become subject to any charge or other encumbrance.
 - (iii) Ensure that all persons having interest in any property in which the equipment is installed consent to the Company's right of access to the equipment, and
 - (iv) Obtain and give the Company written waivers by all persons having any interest in any property in which the equipment is installed of any claim on or interest in the equipment.

13. TERMINATION ON DEFAULT

13.1 This agreement shall automatically terminate (without prejudice to the Company's legal rights and remedies in respect of any antecedent breach of this agreement by the Hirer) and the Company shall be entitled to retake possession of the equipment (so that from that moment the Hirer ceases to be in possession of the equipment with the Company's consent) if:-

- (i) The Hirer fails to comply with any of its obligations under this agreement including the obligation to pay the hire rate and such failure, if capable of being remedied, remains unremedied for seven days after being called to his attention by written notice from the Company.
- (ii) The Hirer dies, becomes bankrupt, has a receiving order made against him, makes any arrangement with his creditors generally or takes or suffers any similar action as a result of debt.
- (iii) The Hirer purports to assign the burden or benefits or charge the benefits of this agreement.
- (iv) The Hirer convenes a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or other action to be taken with a view to its liquidation except for the purpose of the followed by amalgamation or reconstruction.
- (v) A receiver or administrative receiver is appointed of any of the Hirer's property.
- (vi) Any execution or distress is levied upon the Hirer's goods or on the property where the equipment is installed.
- (vii) The Hirer being a partnership is dissolved.

14. CONSEQUENCES OF TERMINATION

14.1 For the purpose of retaking possession of the equipment the Company may enter the premises where the equipment is installed and dismantle and remove the same without incurring any obligation to make good or to reinstate the location from which it is removed and retaking possession shall not affect the right of the Company to recover any money due at the time of the termination or to recover the damages for any breach of this agreement including damages for loss of hire rentals which would otherwise have been payable during the unexpired part of the hire period.

15. HIRER'S WARRANTIES

15.1 The Hirer warrants and represents that:-

- (i) The equipment is required for the purposes of a business carried on by him was selected by him and was acquired at his request by the Company for the purpose of this agreement.
- (ii) In selecting the equipment the Hirer does not rely on the skill or judgement of the Company.
- (iii) Acceptance by the Hirer of delivery of the equipment is conclusive proof that the Hirer is entirely satisfied with the equipment.

16. EXCLUSIONS

16.1 The Hirer acknowledges that:-

- (a) The Company does not make any representations (express or implied by statute common law or otherwise) as to the age state quality or performance of the equipment its correspondence with description or merchantable quality or its fitness for any purpose.
- (b) The Company will not be liable for any loss injury or damage caused by any defect in the equipment save for any death or personal injury caused by the Company's negligence.

16.2 The Hirer indemnifies the Company against all claims damage loss costs and expenses (including legal costs on a full indemnity basis) arising out of the Hirer's possession or use of the equipment.

17. FORCE MAJEURE

17.1 The Company shall not be liable for any failure in the performance of any of its obligations under this agreement caused by factors outside its control

18. WAIVER

18.1 The Company may release or compromise the Hirer's liability under this agreement or grant to the Hirer time or other indulgence without affecting the Hirer's liability.

19. VARIATION

19.1 No variation or amendment of this agreement or oral promise or commitment related to it shall be valid or binding unless committed to writing and signed by or on behalf of both parties.

19.2 This agreement is in substitution for all previous contracts express or implied between the Company and the Hirer which are hereby terminated by mutual consent from the commencement date.

20. SETTLEMENT OF DISPUTES

20.1 Should any dispute or difference arise between the parties under the contract at any time then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. For the avoidance of doubt, the following conditions are drafted to comply with Section 108 of the Housing Grants, Construction and Regeneration Act 1996 and any doubts or ambiguities shall be construed accordingly. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.

20.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.

20.3 The Notice under **Clause 20.2** shall also be served forthwith by the Applicant on the Adjudicator named in AAR's Quotation or if not so named, forthwith either upon his identity being subsequently agreed or upon him being appointed under **Clause 20.4** below as the case may be.

20.4 In the event that no Adjudicator is named in the contract, then the parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction Adjudicators (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

21. ADJUDICATION

21.1 The Adjudication is to be carried out in accordance with **Andrews Sykes Group plc Rules for Adjudication - Construction Projects** (a copy of which shall be provided on request) and with the object of securing the appointment of and the referral of the dispute to the Adjudicator within seven days and requiring a Decision by him within twenty-eight days of such referral.

22. LAW AND JURISDICTION

22.1 This agreement shall be governed by English law and the Hirer consents to the exclusive jurisdiction of the English Courts in all matters regarding this agreement except to the extent that the Company invokes the jurisdiction of the Courts of any other country.

23. NOTICES

23.1 Any notice given under this agreement shall be in writing and may be served personally by registered or recorded delivery mail or by telex or facsimile transmission and each party's

address for the service of notice shall be his last know address within the jurisdiction notified to the other party in writing.

24. VALIDITY

24.1 This agreement shall not be binding until signed on behalf of the Hirer and on behalf of the Company by its duly authorised manager.