

OUTBACK RIGGING LTD: CONDITIONS OF HIRE

1 DEFINITIONS AND INTERPRETATION

- 1.1. These Conditions are to be read in conjunction with the Contract.
- 1.1.1 "Conditions" means these terms and conditions as amended from time to time in accordance with clause 14.5.
- 1.1.2 "Contract" means the contract for the hire of equipment concluded by the acceptance by OUTBACK of an order made by the Hirer pursuant to clause 2.
- 1.1.3 "Equipment" means the equipment described in the Contract or any individual item thereof.
- 1.1.4 "Hire Charge" means the weekly charge payable by the Hirer to OUTBACK for the hire of equipment, which is set out in the current OUTBACK price lists.
- 1.1.5 "Hire Period" means a period starting on the date that equipment is despatched to or collected by the Hirer and ending on the date on which the equipment is returned to OUTBACK, calculated on a weekly basis.
- 1.1.6 "Hirer" means the hirer of equipment from OUTBACK as set out in the Contract.
- 1.1.7 "OUTBACK" means Outback Rigging Ltd (company number: 02936177) or Outback Services Ltd (company number: 02936153).
- 1.2 The headings in these Conditions are for ease of reference only and shall not effect their interpretation.
- 1.3 References to clauses are to clauses of these Conditions.

2 ORDERS

- 2.1 OUTBACK reserves the right in its absolute discretion to accept any order for the hire of Equipment if it is in writing or agreed orally.
- 2.2 Unless otherwise agreed, the written or oral acceptance of the Hirer's order by an authorised employee of OUTBACK shall constitute the Contract, which shall be subject to these Conditions. Any terms or conditions in the Hirer's order or other documentation of whatsoever kind which are inconsistent with these Conditions shall have no effect.
- 2.3 OUTBACK reserves the right in its absolute discretion to refuse to accept any order.

3 HIRE OF EQUIPMENT

- 3.1 OUTBACK hereby hires to the Hirer the Equipment for the Hire Period at the Hire Charge.
- 3.2 OUTBACK reserves the right to supply equipment of a similar design to the Equipment.
- 3.3 All description and specifications, drawings and particulars of weights and dimensions issued by OUTBACK are approximate only, and are intended only to present a general idea of the equipment to which they refer and shall not form part of the Contract. Due to continuing development OUTBACK reserves the right to change specifications without notice.

4 HIRE CHARGE

- 4.1 The Hirer shall pay to OUTBACK a sum calculated by multiplying the appropriate Hire Charge for the Equipment by the Hire Period for such items of equipment. The Hire Period shall run from the day of despatch until the day of return irrespective of whether the Equipment is in use or not. A period of two days grace may be given on collection and deliveries. (i.e. collection Friday: return Monday) at OUTBACK's absolute discretion.
- 4.2 The Hirer shall pay to OUTBACK any packing and delivery charges as detailed in OUTBACK's price list, or as confirmed by OUTBACK to the Hirer.
- 4.3 All sums due from the Hirer to OUTBACK hereunder shall be exclusive of value added tax ("VAT") chargeable for the time being.
- 4.4 The Hirer shall pay OUTBACK's invoice for the Hire Charge and any other amounts due within 30 days of the date of invoice. Time shall be of the essence in respect of the payment of all sums hereunder.
- 4.5 Without prejudice to OUTBACK's other rights or remedies, if the Hirer fails to make any payment due to OUTBACK under the Contract by the due date for payment, then the Hirer shall pay interest on the overdue amount at the rate of 5% per annum above Barclays Bank Plc's base rate from time to time. Such interest being calculated on a daily basis from a date 30 days after the date of invoice until actual payment is received. The Hirer shall pay the interest together with the overdue amount when the overdue amount is paid.
- 4.6 OUTBACK has the absolute discretion to review and amend the Hire Charge and its price lists from time to time, and to notify any such changes in prices to the Hirer during the term of the Contract.
- 4.7 In the event that the Hirer fails to pay any invoice submitted to it by OUTBACK pursuant to clause 4.4, OUTBACK shall be entitled to recover from the Hirer any costs and expenses incurred by OUTBACK in recovering any outstanding amounts due to it (including but not limited to any and all costs of debt collection agencies or solicitors instructed on OUTBACK's behalf), in addition to the overdue amount under the invoice and any interest that has accrued under clause 4.5.

5 DELIVERY

- 5.1 Any dates and times quoted for delivery of the Equipment are approximate only and OUTBACK shall not be liable for any delay in delivery of the Equipment howsoever caused.
- 5.2 Notwithstanding the foregoing, where delivery or collection of the Equipment is delayed due to any act or omission of the Hirer or due to OUTBACK's representatives being unable to gain access to the delivery address nominated by the Hirer, the delivery date shall be deemed to be the date on which delivery is first attempted or collection should have taken place.
- 5.3 The Hirer shall conduct a reasonable inspection of the Equipment upon receipt. If such inspection reveals that the Equipment is damaged, or that some of the Equipment is damaged, or that some of the Equipment has been lost, the Hirer shall notify OUTBACK and the carrier either in writing or orally within 3 days of the date of delivery of the Equipment. If the Hirer fails to notify OUTBACK and the carrier in accordance with this clause, or to return the Equipment on demand, the Hirer shall pay to OUTBACK the Hire Charge of the Equipment until the Equipment is returned to OUTBACK.
- 5.4 The Hirer must collect and/or return the Equipment during OUTBACK's normal working hours, which are 9am-5.30pm Monday to Friday.
- 5.5 All Equipment supplied by OUTBACK must be returned in the packaging supplied or a charge will be incurred for replacement packaging as set out in OUTBACK's price list or as notified to the Hirer by OUTBACK.

6 USE OF EQUIPMENT

- 6.1 The Hirer shall ensure that the Equipment is installed and used by competent and qualified personnel in a manner which complies with any applicable statute, regulation or order from time to time in force affecting the Equipment but not limited to the Health and Safety at Work Act 1974 and any statutory amendment or replacement of it.
- 6.2 The Hirer at its expense shall keep the Equipment in good repair, condition and working order, fair wear and tear accepted.
- 6.3 The Hirer shall not without the prior written consent of OUTBACK make any modification or alteration to the Equipment, or take the Equipment out of Great Britain.
- 6.4 The Hirer shall allow OUTBACK to inspect the Equipment upon request during normal working hours, which are 9am-5.30 pm Monday to Friday.

7 OWNERSHIP

The Equipment shall at all times remain the property of OUTBACK and the Hirer shall have no rights to the Equipment other than as hirer and the Hirer shall not do or permit or cause to be done any matter or thing whereby the rights of OUTBACK in respect of the Equipment are or may be prejudicially affected.

8 LOSS, DAMAGE AND INSURANCE

- 8.1 In the event of any loss or damage to the Equipment the Hirer shall pay for its replacement, or the cost of restoring it to good working order, or allow OUTBACK or its agent to carry out such work at the Hirer's expense.
- 8.2 The Hirer shall during the Hire Period keep the Equipment insured for its full replacement value with a reputable insurance company against loss or damage from all risks. The Hirer shall notify its insurers that the Equipment is on hire from OUTBACK and request the insurers to endorse a note of such interest on the policy, naming OUTBACK as loss payee.
- 8.3 Where any event or accident shall occur which is a risk covered by the Hirer's insurance hereunder, the Hirer shall hold any monies received by the same as OUTBACK directs.
- 8.4 The risk in the Equipment shall pass to the Hirer on delivery of the Equipment.

9 HIRER'S INDEMNITIES

Subject to clause 10.1 below, the Hirer shall be solely responsible for and hold OUTBACK fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by OUTBACK as a result of any accident involving the Equipment.

10 LIABILITY

- 10.1 Nothing in these Conditions shall limit or exclude OUTBACK's liability for:
- 10.1.1 death or personal injury caused by OUTBACK's negligence, or the negligence of its employees, agents or subcontractors;
- 10.1.2 fraud or fraudulent misrepresentation;
- 10.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- 10.1.4 defective products under the Consumer Protection Act 1987.
- 10.2 Subject to clause 10.1, OUTBACK's total liability in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise and whether in respect of one claim or in the aggregate, shall in no circumstances exceed the amount of the total Hire Charge for the Hire Period payable under the Contract.
- 10.3 Subject to clause 10.1, OUTBACK shall under no circumstances whatever be liable to the Hirer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.
- 10.4 Each of the preceding sub-clauses of this clause shall be deemed to be separate and severable and enforceable accordingly.
- 10.5 There are no conditions, warranties or other terms, express or implied, that are binding on OUTBACK except as specifically set out in these Conditions and any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated into the Conditions is expressly excluded, to the fullest extent permitted by law.

11 TERMINATION

- 11.1 OUTBACK shall have the right to terminate the Contract forthwith by giving notice in writing, effective immediately on service of that notice, if the Hirer:
- 11.1.1 fails to make a payment in accordance with clause 4; or
- 11.1.2 shall commit any other material breach of its obligation hereunder and shall not within 14 days of notice of such breach remedy the same; or
- 11.1.3 shall enter into liquidation whether compulsorily or voluntarily otherwise than for the purpose of amalgamation or reconstruction without insolvency or shall compound or make any arrangement with its creditors or shall be the subject of an application or order for the same, or shall be subject of any proposal under part 1 of the Insolvency Act 1986 for a composition in satisfaction of its debts, or an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, such notice to be effective upon receipt by the Hirer).

12 CONSEQUENCES OF TERMINATION

- 12.1 Any termination of the Contract shall not affect any accrued rights or liabilities of either party.
- 12.2 On termination of the Contract:
- 12.2.1 the Hirer shall immediately pay to OUTBACK all of OUTBACK's outstanding unpaid invoices and interest and, in respect of any Hire Charges incurred for which no invoice has been submitted, OUTBACK shall submit an invoice, which shall be payable by the Hirer immediately on receipt; and the Hirer shall no longer be in possession of the Equipment with OUTBACK's consent and shall unless otherwise agreed with OUTBACK forthwith return the Equipment to OUTBACK in good working order at such address as OUTBACK may direct and at the Hirer's expense and risk. If the Hirer fails to do so, then OUTBACK may enter the Hirer's premises and take possession of the Equipment. Until the Equipment has been returned, the Hirer shall be solely responsible for the Equipment's safekeeping and will not use it for any purpose not connected with this Contract.
- 12.3 The following clauses shall survive termination of the Contract and shall continue in full force and effect:
- 12.3.1 Hirer's Indemnity (clause 9);
- 12.3.2 Limitation of Liability (clause 10);
- 12.3.3 Consequences of Termination (clause 12);
- 12.3.4 Entire Agreement (clause 14.1);
- 12.3.5 Notices (clause 14.2); and
- 12.3.6 Governing Law and Jurisdiction (clause 14.7).

13 FORCE MAJEURE

Although OUTBACK shall use all reasonable endeavours to discharge its obligations under the Contract in a prompt and efficient manner, it does not accept responsibility for any failure or delay caused by circumstances beyond its control.

14 MISCELLANEOUS

- 14.1 **Entire Agreement.** The Contract and these Conditions constitute the entire agreement between the parties. The Hirer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of OUTBACK which is not set out in the Contract and these Conditions. Nothing in this clause shall limit or exclude any liability for fraud.
- 14.2 **Notices.** Any notice under the Contract shall be in writing and sent by prepaid first class post, or sent by facsimile transmission to its main facsimile number, or delivered by hand to the address stated herein or to the last known address of the addressee. Service shall be deemed to be effective on the date of the facsimile and in the case of posting on the day following the day of posting and any notice delivered to an address by hand shall be deemed to be effective from the date of such delivery.
- 14.3 **Waiver.** A waiver by OUTBACK of any right under the Contract, these Conditions or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by OUTBACK in exercising any right or remedy provided under the Contract, these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy by OUTBACK shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.4 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.5 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by OUTBACK.
- 14.6 **Governing law and jurisdiction.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the English law and shall be subject to the exclusive jurisdiction of the English Courts.