

Net-Work-M Limited – Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 "Network-M" shall mean Net-Work-M Limited, its successors and assigns or any person acting on behalf of and with the authority of Net-Work-M Limited.
 - 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
 - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
 - 1.4 "Services" shall mean all Services provided by Network-M to the Customer, and includes any advice or recommendations (and where the context so permits shall include any incidental supply of Goods and any supply of Equipment as defined hereinafter) and is as described on the invoices, quotation, or any other authorisation forms as provided by Network-M to the Customer.
 - 1.5 "Goods" shall mean Goods supplied by Network-M to the Customer (and where the context so permits shall include any supply of Services as defined above).
 - 1.6 "Equipment" shall mean Equipment supplied on hire by Network-M to the Customer (and where the context so permits shall include any supply of Services as defined above).
 - 1.7 "Price" shall mean the cost of the Services as agreed between Network-M and the Customer subject to clause 5 of this contract.
- 2. Application of these terms and conditions to consumers**
 - 2.1 Where the Customer purchases Services as a consumer these terms and conditions (in particular clauses relating to Risk, Disclaimer, Errors and Omissions, Returns, Warranties, and Limitation of Liability) shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 3. Sale of Goods Act 1979 and Supply of Goods and Services Act 1982**
 - 3.1 This agreement is subject to the provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
 - 3.2 Notwithstanding clause 3.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.
- 4. Acceptance**
 - 4.1 Any instructions received by Network-M from the Customer for the provision of Services and/or the Customer's acceptance of Services provided by Network-M shall constitute acceptance of the terms and conditions contained herein.
 - 4.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - 4.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of Network-M.
 - 4.4 The Customer undertakes to give Network-M at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.
 - 4.5 In order to carry out some Services Network-M will use a qualified telecommunications service provider. Network-M may select and at any time change the service provider for the purposes of providing the Service and shall give notice to the Customer prior to any changes. The Customer irrevocably authorises Network-M to act on their behalf in all dealings with any telecommunications service provider in connection with the Services.
 - 4.6 The Customer understands and accepts that this Service agreement is non-transferrable and that the Customer will be bound by the terms and conditions contained herein for a minimum period of thirty six (36) months commencing on the date of Network-M's acceptance of the Customer's order for the Services.
 - 4.7 Both Network-M and the Customer agree to comply with the terms and conditions of trade of third party suppliers applicable to the provision of any Services by Network-M (including, but not limited to, BT Openreach and any other subcontractors managed on behalf of the Customer by Network-M).
- 5. Price and Payment**
 - 5.1 At Network-M's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Network-M to the Customer in respect of Services provided; or
 - (b) Network-M's current Price at the date of delivery of the Services according to Network-M's current Price list, which can be viewed at Network-M's website with secure access (upon request only); or
 - (c) Network-M's quoted Price (subject to clause 5.2) which shall be binding upon Network-M provided that the Customer shall accept Network-M's quotation in writing within thirty (30) days.
 - 5.2 Network-M reserves the right to change the Price in the event of a variation to Network-M's quotation. Network-M may by giving notice to the Customer at any time up to seven (7) days before delivery increase the Price to reflect any increase in the cost to Network-M beyond the reasonable control of Network-M, (including, without limitation, foreign exchange fluctuations, taxes and duties, provisions of any Acts, By-Law, Order or Regulation of any parliament, municipality or local authority enacted after the date of contract between the Customer and Network-M and the cost of labour, materials and other manufacturing costs).
 - 5.3 At Network-M's sole discretion a deposit may be required.
 - 5.4 At Network-M's sole discretion a bond may be required for any Equipment on hire which shall be refunded upon return of the Equipment in a condition acceptable to Network-M.
 - 5.5 At Network-M's sole discretion
 - (a) Payment shall be due before the provision of the Services; or
 - (b) payment shall be due on completion of the Services; or
 - (c) payment for approved Customer's shall be due fifteen (15) days following the date of the invoice.
 - 5.6 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due ten (10) days following the date of the invoice.
 - 5.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and Network-M.
 - 5.8 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
 - 5.9 Receipt by Network-M of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Network-M's ownership or rights in respect of the Services shall continue.
 - 5.10 Network-M's normal hours of operation are Monday to Friday from 9am to 5pm (excluding public holidays). In the event that Network-M is called out to the Customer's premises to perform Services outside Network-M's normal hours of operation the Customer may be charged a callout fee in accordance with Network-M's Price List.
 - 5.11 Unless requested otherwise by the Customer, Network-M shall put the Customer's name, address and phone number in the relevant Phone Book for the Customer's area free of charge and as soon as possible. If the Customer requests a special listing in the Phone Book or any other directory the Customer shall be liable to pay additional charges.
 - 5.12 If the Customer is contracted to a minimum Call Spend and at the end of the year the Customer has not met that spend, then the Customer shall be liable to pay twenty percent (20%) of the difference between what has been spent and what should have been spent under the agreement.
- 6. Delivery of Services**
 - 6.1 At Network-M's sole discretion delivery of the Services shall take place when:
 - (a) the Customer takes possession of the Services at Network-M's address; or
 - (b) the Customer takes possession of the Services at the Customer's nominated address (in the event that the Goods are delivered by Network-M or Network-M's nominated carrier).
 - 6.2 The Customer shall make all arrangements necessary to accept delivery of the Services whenever they are tendered. In the event that the Customer is unable to accept delivery of the Services as arranged then Network-M shall be entitled to charge a reasonable fee for redelivery.
 - 6.3 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 6.4 Network-M may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 6.5 The failure of Network-M to deliver shall not entitle either party to treat this contract as repudiated.
 - 6.6 Network-M shall not be liable for any loss or damage whatsoever due to failure by Network-M to deliver the Services (or any of them) promptly or at all, where due to circumstances beyond the control of Network-M.
- 7. Risk**
 - 7.1 If Network-M retains ownership of the Services nonetheless, all risk for the Services passes to the Customer on delivery.
- 7.2 The Customer acknowledges that Network-M may have to perform Services (some unforeseen) that could affect the facility for the Customer to make and receive calls. Such Services include, but are not limited to:
 - (a) changing the code or phone number or the technical specification of the Service for operational reasons; and
 - (b) interrupt the Service for operational reasons or because of an emergency; and
 - (c) give the Customer instructions that Network-M deems necessary for health and safety reasons or to optimise the quality of the Service.
 - 7.3 Network-M offers no guarantee against interruptions or faults to the Service. In the event that the Customer reports a fault or interruption in Service to Network-M, Network-M shall respond to the report in accordance with the level of repair service previously selected by the Customer. Where Network-M responds to such a report and finds that there is no fault or that the fault is caused by someone at the Customer's premises then Network-M reserves the right to charge a reasonable fee for the callout and for any Services carried out to repair the fault.
 - 7.4 Unless otherwise agreed in writing by Network-M, the Customer agrees to only connect phones, extension wiring, sockets or other devices to Network-M's network using a main telephone socket that Network-M has fitted and maintains. Network-M shall not be liable for any loss or damage that may arise through the Customer's failure to meet this requirement.
 - 7.5 Telecommunications Devices not provided by Network-M must only be used with Network-M's network in a way that meets the relevant standards and licence requirements. If the Device does not meet those standards or licence requirements the Customer must immediately disconnect it, or allow Network-M to do so at the Customer's expense. If required, Network-M shall at the Customer's request and cost, inspect the Devices to determine if it meets the relevant standards and licence requirements.
- 8. Customer's Responsibility**
 - 8.1 The Customer shall ensure that Network-M has clear and free access to the work site at all times to enable them to undertake the Services. Network-M shall not be liable for any loss or damage to the site unless due to the negligence of Network-M.
 - 8.2 If, in the course of providing the Services, Network-M is required to cross or install Goods and/or Equipment on a premises owned by a third party then it is the Customer's responsibility to obtain permission from the third party to do so.
 - 8.3 It is the Customer's responsibility to provide at Customer's expense heat, light, power, ventilation, electric current and outlets if required by Network-M to perform the Services.
- 9. Title**
 - 9.1 It is the intention of Network-M and agreed by the Customer that ownership of the Goods shall not pass until:
 - (a) the Customer has paid all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to Network-M in respect of all contracts between Network-M and the Customer.
 - 9.2 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until Network-M shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from Network-M to the Customer Network-M may give notice in writing to the Customer to return the Goods or any of them to Network-M. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) Network-M shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Customer fails to return the Goods to Network-M then Network-M or Network-M's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
 - (e) the Customer is only a bailee of the Goods and until such time as Network-M has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for Network-M; and
 - (f) the Customer shall not deal with the money of Network-M in any way which may be adverse to Network-M; and
 - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Network-M; and
 - (h) Network-M can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Network-M will be the owner of the end products.
- 10. Defects**
 - 10.1 The Customer shall test and/or inspect the Services on completion and shall within ten (10) days notify Network-M of any alleged defect, fault, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Network-M an opportunity to inspect the alleged defect within a reasonable time following such notification if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions the Services shall be presumed to be free from any defect, damage or fault. For defective Services, which Network-M has agreed in writing that the Customer is entitled to reject, Network-M's liability is limited to rectifying the Services.
- 11. Warranty**
 - 11.1 For Goods not manufactured by Network-M, the warranty shall be the current warranty provided by the manufacturer of the Goods. Network-M shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
 - 11.2 In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Network-M as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Network-M shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 12. Default and Consequences of Default**
 - 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of two and a half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
 - 12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Network-M.
 - 12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Network-M from and against all costs and disbursements incurred by Network-M in pursuing the debt including legal costs on a solicitor and own client basis and Network-M's collection agency costs.
 - 12.4 Without prejudice to any other remedies Network-M may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Network-M may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. Network-M will not be liable to the Customer for any loss or damage the Customer suffers because Network-M exercised its rights under this clause.
 - 12.5 If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
 - 12.6 Without prejudice to Network-M's other remedies at law Network-M shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Network-M shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Network-M becomes overdue, or in Network-M's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 13. Security and Charge**
 - 13.1 Despite anything to the contrary contained herein or any other rights which Network-M may have howsoever:
 - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Network-M or Network-M's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Network-M

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- (or Network-M's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should Network-M elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Network-M from and against all Network-M's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Network-M or Network-M's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- 14. Intellectual Property**
- 14.1 Where Network-M has designed, drawn or written plans or Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Network-M, and shall only be used by the Customer at Network-M's discretion.
- 14.2 The Customer warrants that all designs or instructions to Network-M will not cause Network-M to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Network-M against any action taken by a third party against Network-M in respect of any such infringement.
- 14.3 The Customer hereby authorises Network-M to utilise images of the Goods designed or drawn by Network-M in advertising, marketing, or competition material by Network-M.
- 15. Suspension of Services**
- 15.1 In addition to clause 12.4, Network-M may suspend the provision of Services if:
- (a) Network-M, in their opinion, determines that the Services are being used by the Customer to make offensive, indecent, menacing, nuisance or hoax calls or the Services are being used fraudulently or in connection with a criminal offence; or
- (b) If the Customer's agreed Call Level is reached before the next quarterly invoice is to be issued to the Customer. Network-M shall contact the Customer prior to suspending Services to discuss the necessary course of action in this situation; or
- 15.2 In the event that the Services are disconnected or suspended by Network-M, the agreement shall continue and the Customer shall be liable to pay all charges under the agreement plus a reconnection fee on each line that has been disconnected.
- 16. Cancellation**
- 16.1 Network-M may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. On giving such notice Network-M shall repay to the Customer any sums paid in respect of the Price. Network-M shall not be liable for any loss or damage whatever arising from such cancellation.
- 16.2 The Customer may cancel the Services before the Services become operational within seven (7) days of receiving confirmation of the Services from Network-M. Such notice must be in writing and sent by registered post to Network-M to ensure receipt by Network-M. Any cancellation of the Services after this seven day period and prior to the commencement of Services shall incur a cancellation fee.
- 16.3 In the event that the Customer cancels the Services after the commencement of the Services then the Customer shall be liable to pay for any loss incurred by Network-M (including loss of profit) which shall be calculated based on the average monthly invoice or projected call spend and line rental (including VAT) over the number of months remaining on the Customer's minimum period.
- 16.4 The Customer may cancel a service agreement after fulfilling the minimum period by providing Network-M with ninety (90) days notice of their intention to cancel in writing.
- 16.5 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.
- 17. Data Protection Act 1998**
- 17.1 The Customer and the Guarantor/s (if separate to the Customer) authorises Network-M to:
- (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
- (b) to disclose information about the Customer, whether collected by Network-M from the Customer directly or obtained by Network-M from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Customer on publicly accessible credit reporting databases.
- 17.2 Network-M may also use information about the Customer to monitor and analyse its business. In this connection the Customer authorises Network-M to disclose personal information to agents or third parties engaged by Network-M.
- 17.3 The Customer consents to the transfer of information outside of the European Economic Area for the purposes listed above.
- 17.4 Where the Customer is an individual the authorities under (clause 17.1) are authorities or consents for the purposes of the Data Protection Act 1998.
- 17.5 The Customer shall have the right to request Network-M for a copy of the information about the Customer retained by Network-M and the right to request Network-M to correct any incorrect information about the Customer held by Network-M.
- 18. Confidentiality**
- 18.1 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 19. Limitation of Liability**
- 19.1 Network-M shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Customer or any third party arising out of a breach by Network-M of these terms and conditions.
- 19.2 In the event of any breach of this contract by Network-M the remedies of the Customer shall be limited to damages and Network-M's liability (if any) whether in contract, tort or otherwise in respect of any fault in the Services, or for any breach of these terms and conditions, or of any duty owed to the Customer in connection with them shall be limited to the amount of the Price.
- 19.3 For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict Network-M's liability for the death or personal injury to any person resulting from Network-M's negligence.
- 20. Unpaid Network-M's Rights**
- 20.1 Where the Customer has left any item with Network-M for repair, modification, exchange or for Network-M to perform any other Service in relation to the item and Network-M has not received or been tendered the whole of the Price, or the payment has been dishonoured, Network-M shall have:
- (a) a lien on the item;
- (b) the right to retain the item for the Price while Network-M is in possession of the item;
- (c) a right to sell the item.
- 20.2 The lien of Network-M shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
- 21. Customer's Disclaimer**
- 21.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Network-M and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgment.
- 22. Consumer Protection (Distance Selling) Regulations 2000 (DSR's)**
- 22.1 Where the Customer purchases Services as a consumer under the Consumer Protection (Distance Selling) Regulations 2000, the Customer shall be entitled to cancel this contract for any reason without penalty within seven (7) days of the date of delivery of the Services. Cancellation of orders for custom-made or clearly personalised Services, Services made to the Customer's specifications, or Services which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly, will definitely not be accepted.
- 22.2 In the event the Customer cancels any contract prior to delivery of the Services (and any Goods and/or Equipment are in transit), the Customer must refuse delivery of the Goods and/or Equipment.
- 22.3 Upon cancellation, it shall be the Customer's responsibility to return any Goods or Equipment (at their own cost) to Network-M. Network-M may, at their sole discretion, arrange collection of the Goods or Equipment and any costs incurred shall be deducted from the Customer's refund.
- 22.4 The Customer is under a statutory duty to retain possession of the Goods and/or Equipment and take reasonable care of them. Reasonable care means the Customer must take care to ensure that Network-M receives the returned Goods and/or Equipment, and that those Goods and/or Equipment are not damaged in transit.
- 22.5 Network-M shall refund the Customer the full amount paid for the Services (less any costs to collect the Goods and/or Equipment) within thirty (30) days of receipt of the cancellation notice.
- 23. General**
- 23.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of England, Wales and Scotland and are subject to the jurisdiction of the courts of Manchester.
- 23.3 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Network-M.
- 23.4 Network-M may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.5 Network-M reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Network-M notifies the Customer of such change. Except where Network-M supplies further Services to the Customer and the Customer accepts such Services, the Customer shall be under no obligation to accept such changes.
- 23.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 24. Definitions**
- 24.1 "Hire Period" shall mean the Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Network-M to the Customer.
- 25. Application of these terms to Consumers**
- 25.1 Where hire of the Equipment is to a Customer who is an individual and the hire would be covered by the Consumer Credit Act 1974, the duration of the Hire Period shall not exceed three (3) months, after which time the contract shall be deemed to have automatically terminated. Accordingly, the hire of any Equipment is not covered by the Consumer Credit Act 1974.
- 26. Variations**
- 26.1 In the event of a variation, Network-M will give the Customer a written document stating the reason for the variation, a full description of the variation, any effect the variation will have on the agreement, including but not limited to, the Price and any revised expiration date, and shall require written acceptance by the Customer of the variation prior to execution of the variation. All variations (including those to the quantity and specifications of the Equipment) must be in writing, dated and signed by both parties.
- 27. Hire Period**
- 27.1 Hire charges shall commence from the time the Equipment from Network-M's premises and will continue until the return of the Equipment to Network-M's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. The off-hire receipt will be issued when the Equipment is either picked up by Network-M or returned to Network-M's premises.
- 27.2 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Network-M confirms special prior arrangements in writing. In the event of Equipment breakdown, and provided the Customer notifies Network-M immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.
- 28. Risk**
- 28.1 Network-M retains property in the Equipment, nonetheless all risk for the Equipment passes to the Customer on delivery.
- 28.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Network-M for all loss, theft, or damage to the Equipment, howsoever caused, and without limiting the generality of the foregoing, whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.
- 28.3 The Customer will insure, or self insure, Network-M's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 28.4 The Customer accepts full responsibility for, and shall keep Network-M indemnified, against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, or damage to property, arising out of the use of the Equipment during the hire period, however arising, and whether or not arising from any negligence, failure or omission of the Customer or any other persons.
- 29. Title**
- 29.1 The Equipment is and will at all times remain the absolute property of Network-M.
- 29.2 If the Customer fails to return the Equipment to Network-M, then Network-M, or Network-M's agent, may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated as the invitee of the Customer and take possession of the Equipment, without being responsible for any damage thereby caused.
- 29.3 The Customer is not authorised to pledge Network-M's credit for repairs to the Equipment, or to create a lien over the Equipment in respect of any repairs.
- 30. Customer's Responsibilities**
- 30.1 The Customer shall:
- (a) notify Network-M immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Network-M or posted on the Equipment;
- (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use;
- (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (f) on termination of the hire, the Customer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Network-M;
- (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
- (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (i) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (j) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 30.2 Immediately on request by Network-M the Customer will
- (a) within seven (7) business days notify Network-M of where the Equipment is located;
- (b) pay the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Network-M;
- (c) pay all costs incurred in cleaning the Equipment;
- (d) pay all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
- (e) pay the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;
- (f) pay the cost of repairing any damage to the Equipment caused by vandalism, or (in Network-M's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
- (g) pay the cost of fuels and consumables provided by Network-M and used by the Customer.
- 30.3 The Customer shall be responsible for free access by Network-M to the nominated address on which the Equipment is, or is to be, located. If there are any delays due to free access not being available, then the Customer shall be responsible and shall reimburse Network-M for all lost hire fees associated with the Equipment being unavailable. The Customer shall also be responsible for all other expenses and costs incurred by Network-M due to delays in access to the Equipment.