

# THE WAREHOUSE EXPERTS

## T/A Big Space Solutions – TERMS AND CONDITIONS FOR THE HIRE OF EQUIPMENT AND SERVICES

### 1) INTERPRETATION

- “**Associated Companies**” means any subsidiary company or holding company and its subsidiaries.
- “**Charges**” means our charges for the hire of Equipment and the provision of Services to you as specified in this Contract.
- “**Commencement of Erection Date**” means the date that we commence the erection or installation of the Equipment.
- “**Contract**” means the Order Form, Written Order Acknowledgment and these Terms and Conditions, together forming the contractual agreement between us and you.
- “**Deposit**” means any advance payment required by us in relation to the hire of Equipment and provision of Services which is to be held as security by us.
- “**Equipment**” covers all the classes of prefabricated and portable buildings, marquees, erectable structures, accessories and ancillary equipment, and any Services Equipment, which are supplied to you.
- “**Erection Date**” means the completion of the erection or installation of the Equipment and transfer of physical possession of the Equipment to you at the Site.
- “**Event Services**” means the provision of the bespoke services listed on the Order Form.
- “**Force Majeure**” means any event outside a party’s reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions, adverse weather conditions, shortage of carriage or shipping facilities and any other similar events.

- “Hire Period”** commences on the Erection Date and continues until the date the Equipment is returned to us and the Contract is terminated by the parties.
- “Liability”** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs (including but without limitation all legal costs and disbursements) and any other losses or liabilities.
- “Long Hire”** means a Hire Period for a duration of 5 weeks or more.
- “Minimum Hire Period”** in the case of a Long Hire, means the minimum period of hire, which shall be the period of 5 weeks from the Erection Date or such other period as specified in the Contract.
- “Order Form”** means the written quotation issued by us in relation to the Equipment and Services and accepted by you by way of clicking a green button as contained within the written quotation.
- “Party”** means a party to this Contract.
- “Personnel”** means our employees, sub-contractors and/or agents.
- “Related Contract”** means any contract other than this Contract between you (or your Associated Companies) and us (or our Associated Companies).
- “Services”** means the services (if any) to be performed by us for you including the Event Services and the transport, delivery, construction, dismantlement and collection of the Equipment.
- “Services Equipment”** all equipment, including apparatus, tools, systems, cabling or facilities used directly or indirectly in the supply of the Event Services, but excluding consumable items such as fuel whereby title passes to you, and any such items which are the subject of a separate agreement between the parties under which title passes to you..

**“Short Hire”** means a Hire Period for a duration of less than 5 weeks.

**“we/us/our”** means Big Space Solutions, a company registered in Ireland, with its registered office at address Unit 16, Mullaghboy Industrial Estate, Mullaghboy, Navan, Co. Meath, C15 YR76, Ireland including any successors or subsidiaries.

**“You”** means the person, firm, company or other organisation hiring the Equipment and using the Services. The headings shown are for reference only and they do not in any way alter or affect the interpretation of these Terms and Conditions.

The rule known as the ejusdem generis rule will not apply to these Terms and Conditions and accordingly general words introduced by the word “other”, “including”, “include” or “in particular” or any similar expression will not be given a restrictive meaning because of the fact that they are preceded by words indicating a particular class of acts, matters or things and will be construed as illustrative and will not limit the sense of the words preceding those terms.

## **1) BASIS OF CONTRACT**

a) We will hire the Equipment, and where agreed provide the Services, to you and you shall pay the Charges.

b) These conditions do not affect any of your statutory rights where you are a person dealing as a consumer, not for business purposes. Any section which would otherwise exclude or restrict your rights as a consumer will, to that extent have no force or effect.

c) Our Personnel are not authorised to make any representations concerning the Equipment unless confirmed by our director in writing and any advice or recommendation

given by us to you as to the storage, application or use of the Equipment which is not confirmed in writing by our director is followed or acted upon entirely at your own risk.

d) We reserve the right to provide Equipment similar or comparable to that ordered by you. Any photographs, drawings and specifications shown on our website or provided by email, fax or post are for example only. It is your responsibility to check and confirm in writing with us should there be exact requirements needing to be met.

e) These conditions shall be applicable to all repeat orders made by you unless we notify you otherwise.

f) All Equipment is offered subject to availability at the date of delivery.

We will not be liable for any loss suffered by you as a result of the Equipment being unavailable for hire.

g) The Contract is deemed to be made at our registered office.

h) Our quotations and estimates are without commitment and the Contract is not binding on us unless we accept your Order in writing (including by email) by sending you a 'Written Order Acknowledgement' confirming the Order.

## **2) CHARGES AND PAYMENT**

a) The amount of any Deposit and Charges are detailed in the Contract and are based on our current price list from time to time.

b) You shall pay the Charges as set out in the Order Form.

- c) In addition to the Charges, we reserve the right to charge (at our then current rates) an additional price for any Services and Equipment supplied or costs incurred by us which are additional to the Contract specification.
- d) All Charges are, unless otherwise stated, exclusive of any applicable VAT which will be charged in line with current Irish legislation.
- e) We shall be free to increase quoted prices (whether accepted or not) to cover variations in cost to us of materials, manufacture and carriage when variations in such costs arise between the date of quotation and the date of formation of the Contract, which occurs when we issue our Written Order Acknowledgement.
- f) No allowance or deduction shall be permitted from the Charges in respect of any period where for whatever reason you do not use the Equipment or Services.
- g) In the case of a Long Hire, we reserve the right to amend the Charges for hire during the term of the Contract by giving 4 weeks' notice in writing to you at any time after the Minimum Hire Period has expired.
- h) The payment schedule for the Charges shall be set out in the Order Form, but if not set out in the Order Form then payment of any Charges or any other sums due under this Contract shall be made in full and cleared funds on the date of the invoice.
- i) If you fail to make any payment in full on the due date we may, without prejudice to any other rights we may have

under this Contract or otherwise, decline to provide Services and remove the Equipment. We may also charge you:

i) interest (both before and after judgment) on the amount unpaid at the rate of 8% above the European Central Bank base rate in force from time to time or, if higher and applicable, in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2012 as amended; and

ii) Charges and costs we reasonably incur in the recovery of the outstanding

money or Equipment, including (but not limited to) debt collection agency fees and legal costs and disbursements.

j) You shall pay all sums due to us under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

k) We may set a reasonable credit limit for you. We reserve the right to terminate or suspend the Contract if allowing it to continue would result in you exceeding your credit limit or if you have already exceeded the credit limit.

### **3) RISK, TITLE AND INSURANCE**

a) Risk in the Equipment will pass to you immediately upon delivery to, or collection by, you.

b) Risk of loss, theft, damage or destruction of the Equipment shall pass to you on the Erection Date and will remain with you during the Hire Period until the Equipment is returned to our possession. Subject to the other terms of

this Contract, you will be responsible for all damage or loss to the Equipment.

c) Title in the Equipment shall remain with us at all times. You have no right, title or interest in the Equipment (save the right to possession and use of the Equipment subject to the terms of the Contract), and you must not sell, assign, mortgage, pledge, charge, secure, hire, withholding, exert any right to withhold, dispose of or deal with title to the Equipment in any way.

d) You must notify us immediately if you become subject to any of the events listed in clause 9(e)).

e) You must not without our prior written consent, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and you shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify us against all losses, costs or expenses incurred as a result of such affixation or removal.

f) You must not do or permit to be done any act or thing which will or may jeopardise our right, title and/or interest in the Equipment and, where the Equipment has become affixed to any land or building, you must take all necessary steps to ensure that we may enter such land or building and recover the Equipment both during the Hire Period and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of us of any rights such

person may have or acquire in the Equipment and a right for us to enter onto such land or building to remove the Equipment.

g) You shall not suffer or permit the Equipment to be confiscated, seized or taken out of your possession or control under any

distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, you shall notify us immediately and you shall, at your sole expense, use your best endeavours to procure an immediate release of the Equipment and shall indemnify us on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation.

h) Prior to the Erection Commencement Date, or where relevant the commencement of the Services, you shall, at your own expense, obtain and maintain the following insurances<sup>1</sup>:

i) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as you may from time to time nominate in writing (“All Risks Insurance”);

ii) public and employers liability insurance;

iii) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as we may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and



iv) insurance against such other or further risks relating to the Equipment and Services as may be required by law,

together with such other insurance as we may from time to time consider reasonably necessary and advise you.

i) Unless proof of an All Risks Insurance policy is provided to us 10 day prior to the Commencement of Erection Date, we will procure an All Risk Insurance policy on your behalf and add this to your Charges, together with a 5% administrative surcharge.

j) You shall notify the insurers of our interest and shall cause such interest to be noted on the insurance policies together with a provision to the effect that, if any claim is brought or made by us against you in respect of which you would be entitled to received indemnity under any of the insurance policies, the relevant insurer will indemnify us directly against such claim and any charges, costs, expenses in respect of such claim. If the relevant insurer does not so indemnify us, you shall use all insurance monies received by you to indemnify us in respect of any claim and shall make good any deficiency from your own resources.

k) It is your responsibility to insure your own contents that are placed within the Equipment.

l) Where, as part of the Services, we undertake work or provide labour (which we may sub-contract) at your works or elsewhere, you shall indemnify us against all Liability arising directly or indirectly from defects in or unsuitability of the works or site or of apparatus or plant (other than that provided by us) or from negligence or breach of

statutory duty on your part or that of your employees or any other third party (other than our own employees) and howsoever arising.

m) If our Personnel, on your instruction, transport or work on any goods or other property belonging to you or any third party outside the scope of the Services, they do so (and they are packed and carried) at your sole risk and (except as provided in these Terms and Conditions) we shall have no liability to you or to any other party for loss, deterioration or damage to such goods or other property howsoever arising and whether by negligence or otherwise.

## **4) SERVICES**

a) Delivery times are given as estimates and time shall not be of the essence. Although we will attempt to meet your delivery or collection requirements we shall be under no obligation to deliver Equipment or supply Services by any specified date.

b) We shall not be liable for any Liability or other losses or expenses arising as a result of late or non-delivery arising from accident or breakdown during loading, unloading or transport of the Equipment.

c) During the provision of the Services, you shall be solely responsible for any damage which occurs as a result of our Personnel following your instructions, except to the extent that our Personnel are negligent.

d) You will provide us with a Site plan showing the position in which

the Equipment shall be erected and shall have a representative on the Site on the Commencement of Erection Date for the purpose of directing our Personnel in relation to the positioning of the Equipment. If you fail to provide such a Site plan or have a representative on the Site, our Personnel may erect the Equipment where they think fit and we shall be deemed to have performed the Contract. Should you fail to have a representative on Site on the Commencement of Erection Date, then any dissatisfaction with the placing of the Equipment is your responsibility and we will charge you additional Charges should you request us to move the Equipment.

e) You will allow and/or procure sufficient access to and from the Site and procure sufficient loading space, facilities and access to power supplies and utilities for our Personnel (including support vehicles) to allow them to carry out the Services, including providing all plant and power required for loading or unloading the Equipment. You will ensure that the Site where the Services are to be performed:

i) is cleared and prepared before the Services are due to commence;

ii) is flat, level, firm ground with easy access for heavy motor vehicles; and

iii) has no drains, pipes, cables or other services buried beneath the surface or otherwise concealed.

f) It is your responsibility to notify us of any underground piping, wiring or drains and we shall not be Liable for any damage caused as a result

of hitting concealed wires or pipes or drains.

g) You shall provide a suitable access route for delivery and collection of the Equipment with unrestricted entry and approach for all support vehicles and Personnel and supply appropriate foundations or track-way in a suitable position for loading and unloading and for the Equipment to rest on. It is your responsibility to ensure the ground conditions at the Site and surrounding areas are safe and adequate for all support vehicles, and to provide the necessary equipment to carry out this operation. You will be responsible for paying any costs for recovering our vehicles if this should become necessary. You will also obtain any dispensations which are required for delivery of the Equipment to take place. We will charge for all expenses incurred during the provision of the Services, including toll charges and parking fees/fines.

h) You shall pay for any lifting or special apparatus required for the siting of the Equipment.

i) Connection and disconnection of main services on Site is your responsibility.

j) You are responsible for ensuring that the Site is secure for the duration of the Services and the Hire Period.

k) You agree to make good any holes or damage caused to the ground of the Site by the Equipment following the removal of the Equipment.

l) We accept no liability for any cost incurred by you due to delay or

cancellation of a delivery or collection due to Force Majeure.

m) You shall insure all Personnel whilst on your Site/property against all acts of negligence.

n) We, and any sub-contractor we engage, may engage the services of any other sub-contractors for the purpose of fulfilling the Contract in whole or in part and the name of every other such sub-contractor shall be provided to the Customer upon request.

o) You shall provide to us in a timely manner all documents, information, items and materials in any form (whether owned by you or a third party) required by us in connection with the Services and ensure that they are accurate and complete.

p) You shall comply with the reasonable instructions of our Personnel during the provision of any Event Services, including but not limited to complying with all operating guidelines, health and safety instructions or requirements and signing all applicable consent forms prior to participation in certain activities that are the subject of the Event Services.

## **5) FORCE MAJEURE**

a) We may suspend or cancel the whole or any part of the Contract if by reason of Force Majeure either we are prevented or hindered from performing our obligations or performance of those obligations is to a substantial degree rendered difficult.

b) If we exercise our right of suspension, you may within 7 days cancel any remaining part of the

Contract conditionally on your paying expenses incurred to the date of the suspension and fair charges. An exercise of our right of suspension, will not be breach of this Contract and we will have no Liability towards you.

c) Upon a cancellation, whether by us pursuant to clause 5) a), or you pursuant to clause 5)b), our Liability (if any) is limited to repayment of any part of the Charges received less our fair charges and any expenses already incurred by us.

## **6) CARE AND MAINTENANCE OF EQUIPMENT**

a) You are required to inspect the Equipment and sign an acknowledgment that the Equipment is accepted to you before our Personnel leave the Site. The Equipment shall be deemed to be in good order and condition in accordance with the Contract unless we receive notification from you within 24 hours of the Equipment being delivered to the Site.

b) You shall not interfere with the Equipment except in accordance with any operating instructions provided or with the prior written approval of the Company.

c) To the fullest extent permitted by law, no warranty is given that the Equipment is suitable for the purpose you require it for.

d) You shall not deface or remove any labels or identifying marks from and/or interfere with the Equipment, its working mechanisms or any other parts of it. You shall not at any time alter or deface our name or any of our

trademarks or juxtapose with them any other mark likely to cause confusion.

e) You shall take reasonable care of the Equipment and keep it properly maintained and only use it for its proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided to or supplied to you and any applicable law or regulations (including any Engineers Ireland regulations).

f) For the duration of the Services and the Hire Period you shall ensure that the Equipment is kept and operated in a suitable environment, which shall as a minimum meet the requirements set out in any operating instructions provided to you, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by our Personnel.

g) If there is snow weather forecasted during the Hire Period, you are required and responsible for ensuring that you have heaters on standby and that the heaters will be working and a full supply of fuels is in store in order to heat any Equipment comprising a pre-fabricated or portable building, marquee or other erectable structure, so that snow does not lie on the roofs, for the full duration of the presence of snow.

h) You must make no alteration to the Equipment and you shall not remove any existing component(s) from the Equipment, without our prior written consent, unless (i) carried out to comply with any

mandatory modifications required by law or any regulatory authority or (ii) unless the component(s) is/are replaced

immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the us immediately upon installation.

i) It is your responsibility to carry out a detailed risk assessment of the Site and Site buildings. You should conduct a detailed fire risk assessment of the site, taking into account its size, layout and proximity of neighbouring buildings. From this, you should develop a Site safety plan that includes a fire risk assessment for all temporary buildings. Site buildings should be separated from any Equipment under construction by a clear fire break of at least six metres – preferably considering more. This fire break should be kept clear of combustible materials at all times.

j) You shall inspect the Equipment on a regular basis and notify us immediately, and in any event within 24 hours, of any breakdown, loss and/or damage to the Equipment. You shall also notify us immediately, and in any event within 24 hours, of any accident resulting in death, personal injury or damage to property.

k) You shall take adequate and proper measures to protect the Equipment from theft, damage and/or other risks.

l) You shall notify us of any change of your address and upon our request provide details of the location of the Equipment.

m) You shall at all times allow us and our Personnel to have reasonable access to the Equipment to inspect, test, adjust,



repair or replace the same Equipment including procuring access to any property where the Equipment is situated.

n) You shall keep the Equipment at all times in your possession and control. You shall not remove the Equipment from Ireland and you shall not move the Equipment from the Site to which it is delivered or consigned without our prior written consent.

o) You shall be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Equipment required by any legislation, best practice and/or operating instructions, except to the extent that we have agreed to provide them as part of any Services.

p) We will, at our own cost, carry out all routine maintenance and repairs to the Equipment during the Hire Period (but you agree that you are responsible for applying all maintenance detailed in any operating instructions) and all repairs which are required due to fair wear and tear and/or an inherent fault in the Equipment. You will be responsible for the cost of all other repairs and inspections (such as, but not limited to, electrical works) necessary to Equipment during the Hire Period.

q) You must not repair or attempt to repair the Equipment without our prior written consent.

r) You shall not use the Equipment for any unlawful purposes and shall not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Equipment.

s) You shall not continue to use Equipment where it has been damaged.

t) Where the Equipment requires fuel, oil and/or electricity, you shall ensure that the proper type and/or voltage is used and that, where appropriate, the fuel, oil and/or electricity is properly installed by a qualified and competent person.

u) You must return the Equipment in good working order and condition (fair wear and tear excepted) in a clean condition and free of all hazardous waste, together with all licenses, registration and other documents relating to the Equipment.

v) It is your responsibility to check the Equipment on each occasion before use. Final determination of the suitability of the Equipment for your specific use is your responsibility and you assume all risk and liability in this regard.

w) You shall indemnify us for all expenses, losses (including loss of charges) and/or damage suffered by us arising from any breakdown of the Equipment due to your negligence, misdirection and/or misuse of the Equipment.

## **7) LOSS OR DAMAGE TO THE EQUIPMENT**

a) If the Equipment is returned in damaged, unclean and/or defective state (except where due to fair wear and tear and/or an inherent fault in the Equipment) you shall be liable to pay us for the cost of any repair and/or cleaning required to return the Equipment to a condition fit for re-hire.

b) Where Equipment is lost, damaged beyond repair, or stolen during the Hire Period:

i) you will pay to us our costs which we may incur in tracking or recovering any lost or stolen Equipment;

ii) Where the Equipment is not recovered within 14 days, you will pay to us the replacement cost of the Equipment (on a new for old basis); and

iii) The Hire Period will continue until the Equipment is recovered or you pay the replacement cost for the Equipment, and you shall pay the full Charges that would have applied for such Equipment for that period. If you pay the replacement cost for the Equipment we may (at our discretion) provide you with replacement equipment, or terminate the Hire Period.

c) We shall advise you of any damage found to the Equipment or missing extra chargeable items within 4 weeks of the return of the Equipment. If you dispute the damage or shortage you shall have 5 working days to respond.

d) You shall indemnify us for all costs we incur for employing a specialist contractor to remove and dispose of any waste including additional costs resulting from unidentifiable/hazardous waste.

## **8) SPECIFICATIONS**

a) It is your responsibility to ensure that the Equipment and Services that you order are suitable for the purpose you require.

b) Any specifications, formulations, data, literature and statements as to dimensions, suitability, performance or otherwise, issued, and descriptions and samples given, by

us in connection with our Equipment or Services are offered in good faith but are intended to be approximate only, are not warranted and shall be deemed not to constitute representations.

c) Pursuant to our policy of continuous improvements, we reserve the right without notice to make such changes in materials, dimensions and design as we think reasonable or desirable in all the circumstances having regard to your wishes.

d) All intellectual property rights in our Equipment, Service get up, designs, data sheets, packaging and literature shall remain our property at all times. We grant to you a non-exclusive license to use such intellectual property rights to the extent strictly necessary to make reasonable use of the Equipment and Services we supply. Such license shall terminate on the termination of this Contract.

e) When we supply Equipment or Services for you to your special requirements or for your special purpose (whether or not incorporated in whole or in part in our own specifications) you shall provide all necessary specifications in reasonable time to enable us to complete delivery. You shall indemnify us in full against all Liability we incur in consequence of complying with your requirements in connection with a claim by a third party for infringement of their intellectual property.

## **9) TERMINATION**

Cancellation prior to Commencement of Erection Date:

a) You may cancel this Contract any time prior to the Commencement of Erection Date, subject to the remaining provisions of this Clause.

b) In the event that you wish to cancel the Contract after we have issued our Written Order Acknowledgement but prior to the Commencement of Erection Date, the following penalties apply, save to the extent that any costs/outlay have already been incurred by us, in which case 100% of any applicable costs/outlay will be charged for in addition to the following penalties :

i) if the cancellation date is up to 2 months prior to the Commencement of Erection Date, there will be a charge of 25% of the Charge;

ii) if the cancellation is up to 1 month prior to the Commencement of Erection

Date, the charge will be 50% of the Charge;

iii) if the cancellation is up to 2 weeks prior to the Commencement of Erection Date, the charge will be 75% of the Charge; and

iv) if the cancellation is less than 2 weeks prior to the Commencement of Erection Date, the full Charge will be payable.

c) We may cancel the Contract for any reason at any time after we have issued our Written Order Acknowledgement but prior to the Commencement of Erection Date. In such circumstances, we shall refund you 100% of any deposit or Charges paid to us, and we shall have no further Liability towards you.

## **Cancellation after the Erection Date:**

d) Subject to Clauses 5) and 7), the Contract may be terminated after the Erection Date only as follows:

i) We may terminate the Contract at any time without liability to you immediately on giving you written notice if one of the Events of Default in clause 9)e) occurs;

ii) In the case of a Long Hire, either you or we may terminate the Contract after the Erection Date on giving the other 8 weeks written notice.

e) In the case of a Short Hire, any cancellation of the Contract after the Erection Date will not entitle

you to a refund of the Charges paid to us prior to the Commencement of Erection Date.

f) The Events of Default are:

i) you fail to make any payment to us under the Contract or any other contract with us when due;

ii) you breach the terms of the Contract and, where the breach is capable of remedy, have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

iii) you persistently breach the terms of the Contract;

iv) you provide incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

v) you attempt to pledge, charge or create any form of security over any Equipment;

vi) you cease or threaten to cease to carry on business;

vii) being an individual or partnership, you have a bankruptcy petition presented against you or compound with or come to an arrangement with your creditors, enter into an individual voluntary arrangement or suffer any similar action in any jurisdiction;

viii) being a company, you enter into any voluntary or compulsory liquidation, have an examiner or receiver appointed over all or any of your assets, or compound with or come to any arrangement with your creditors or enter into a company voluntary arrangement, any attachment order is made against you, any distress, execution or other legal process is levied on any of your property or you suffer any similar action in any jurisdiction;

ix) we reasonably believe that, on the basis of your credit rating, you are or will be unable to meet your obligations under the Contract; or

x) we have reasonable ground to believe that any of the events listed in paragraph i – ix above are likely to occur and we notify you accordingly.

g) In addition to our right to terminate the Contract, and without prejudice to any other rights and remedies available to us, if an Event of Default occurs we may:

- i) withhold performance of any Services and cease any Services in progress under the Contract or any Related Contract;
- ii) terminate any Related Contract;
- iii) enter, without prior notice, any of your premises (or premises of third parties with their consent) to repossess the Equipment;
- iv) cancel any undelivered portion of the Contract; and
- v) demand payment of all Charges (including all Charges for the full Minimum Hire Period) and any other amounts outstanding under this Contract or any Related Contract, whether or not due, which shall thereupon become due and payable.

## **10) INDEMNITY**

a) You agree to indemnify us and keep us indemnified in full against any Liability suffered by us howsoever arising from your hire, use or storage of the Equipment, negligence, wilful misconduct or breach of this Contract.

## **11) LIMITATION OF LIABILITY**

a) Subject to clause 11)d) we shall not be liable to you for any losses whether arising from breach of contract, tort (including but not limited to negligence) or restitution, for any breach of statutory duty or misrepresentation, or otherwise, and whether flowing naturally and directly from such breach, negligence or other cause, or not, for:

- i) loss of revenue,
- ii) loss of profit,



- iii) loss of anticipated saving,
- iv) loss of goodwill;
- v) loss of reputation;
- vi) economic and/or other similar losses;
- vii) special damages, indirect losses and/or consequential losses; or
- viii) business interruption, loss of business, contracts and/or opportunity.

b) Further, and subject always to clause 11)d), we shall not be liable for:

- i) any Liability or other losses or expenses whatsoever if, at the time of our alleged default, any Charges or monies due in respect of the Equipment and/or Services are outstanding past their due date for payment;
- ii) any losses or expenses arising from damage to your property other than the replacement cost of the property damaged;
- iii) any Liability or other losses or expenses resulting from or contributed to by your continued use of defective Equipment after a defect has become apparent or suspected or should reasonably have become apparent to you;
- iv) any Liability or other losses or expenses arising from the Equipment becoming unusable for any reason whatsoever; or
- v) any Liability or other losses or expenses to the extent that you are covered by any policy of insurance against that Liability, and you shall ensure that your insurers waive any and all rights of subrogation they may have against us.

c) Subject to clause 11)d) our total liability to you under and/or arising in relation to this Contract or any other agreement whether under contract, tort (including negligence) or restitution, or for any breach of statutory duty or

misrepresentation, or otherwise, shall in all circumstances be limited to 50% of the total Charges due under the Contract or the sum of €1,000, whichever is the lower.<sup>2</sup>

d) Nothing in this Contract shall exclude or limit either party's liability for death or personal injury due to its negligence, fraud or fraudulent misrepresentation, in cases where you are dealing as a consumer, or any other type of liability to the extent such liability may not be excluded or limited as a matter of law.

## **12) GENERAL**

a) You shall be liable for the acts and/or omissions of your employees, agents, servants and/or sub-contractors as though they were your own acts and/or omissions under this Contract.

b) You shall be responsible for compliance with all relevant legislation and regulations issued by Government or local authorities, including (but not limited to) regulations under the Factories Act, and the Safety, Health and Welfare

Act. You shall obtain all permissions, consents and licenses required for the installation and use of the Equipment or provision of the Services from any third party or under any statute, regulations or bylaw and in due time comply with any conditions imposed in respect thereof.

c) No delay or omission by any party in exercising any right, power or remedy provided by law or under this Contract shall: (a) affect that right, power or remedy; or (b) operate as a waiver of it. The exercise or partial exercise of any right, power or remedy provided by law or under this Contract will not preclude any other or further exercise of it or the

exercise of any other right, power or remedy. The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers and remedies provided by law.

d) If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair: (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Contract.

e) If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision will apply with the minimum modification necessary to make it legal, valid and enforceable.

f) This Contract constitutes the entire agreement between the parties and supersedes and replaces all prior terms and conditions, communications, representations, warranties, stipulations, undertakings, and agreements whether oral or written between the parties.

g) Nothing in this Contract and no action taken by the parties under this Contract will constitute, or be deemed to constitute, a partnership, association, joint venture or other co-operative entity between the parties.

h) This Contract is governed by and interpreted in accordance with the laws of Ireland and the parties agree to submit to the exclusive jurisdiction of the Irish courts in relation to any matter or dispute arising out of or in

connection with it (whether of a contractual or tortuous nature or otherwise).

i) You may not assign the Contract or any rights thereunder without our prior written consent.

j) You shall not, without our prior written consent, at any time during the term of this Contract and for a period of ten months after the termination of this Contract, solicit or entice away, or employ or attempt to employ, any of our Personnel or any person who is, or has been, engaged by us as an employee, consultant, or sub-contractor in the provision of the Services or hire of the Equipment.

k) No variation of this Contract or any of the documents referred to in it shall be valid unless it is in writing

and signed by or on behalf of each party.

### **13) CONSUMER CREDIT ACT**

a) Hires to individuals or partnerships of 3 individuals or less (or other unincorporated body of individuals) shall not be for a period in excess of 3 months. You shall return the Equipment to us on or before the last day of such three month period. This clause shall not apply if you hire the Equipment wholly or mainly for business purposes.

### **14) CONSUMERS – RIGHT TO CANCEL**

a) The provisions of clause 13 and this clause 14 only apply to Customers who are a Consumer for the purpose of any hire from us.

b) Subject to clauses 14. d) and 14.e), in the case of all Contracts for Hire, where the Hire Period does not have a

fixed duration, the Customer shall, in accordance with its rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, have the right to cancel the Contract without incurring any charge or Liability within 14 days of the day following the date on which the Quote was accepted by the Customer.

Where a Customer exercises its right to cancel under clause 10.a) and has made payments in advance for Services that have not been provided to it, then we will refund these amounts to the Customer if no Equipment have been provided by the us, 14 days after the day on which we are informed of the Customer's decision to cancel the Contract.

c) Where the Customer deals as a Consumer and requests in writing that we begin provision of the Services within the cancellation period set out in clause 10.a) then the Customer's right to cancel the Contract without incurring any charge or Liability will expire once we have completed the provision of the Services. If the Customer cancels the Contract once we have begun to provide the Services it shall be liable for all costs reasonably incurred by us in providing the Services up to the point we are informed of the Customer's decision to cancel the Contract.

Where the Contract is with a Consumer and provides for a specific date or period of performance,

d) the Consumer will not have a right to cancel the Contract without incurring any charge or Liability to us.

e) Where a Customer cancels the Contract under this clause 10, it shall return any Equipment which we have provided to it at its own cost, unless otherwise expressly agreed in writing.

## 15) PERSONAL DATA

a) For the purposes of this clause, “Data Protection Legislation”: means:

i) The Data Protection Acts 1988, 2003 and 2018;

ii) the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”);

iii) the EU ePrivacy Directive 2002/58/EC (as amended);

iv) any relevant transposition of, or successor or replacement to, those laws (including, when it comes

into force, the successor to the ePrivacy Directive); and

v) all other applicable law, regulations and codes of conduct in any relevant jurisdiction relating to the processing of Personal Data and privacy including the guidance and codes of practice issued by a relevant data protection regulator, including the Data Protection Commission and the European Data Protection Board or the Article 29 Working Party.

b) “Personal Data”, “Processing” each have the same meaning as in the Data Protection Legislation.

c) All information concerning you or your employees or agents which is Personal Data and is processed by us for the purposes of this Contract shall be processed only in accordance with the Data Protection Legislation. You agree to assist us in keeping the Personal Data of your employees and agents relevant and up to date by informing us of any

changes to any Personal Data we hold about you or your employees and agents as soon as possible.

## 16) ARBITRATION

In the event of a dispute between the Parties, any such dispute shall be referred to an expert for determination who shall in default of agreement between the Parties be appointed on the application of either Party by the president for the time being of the Law Society of Ireland (or if the said president is unable or unwilling to act, by the next senior officer of the Society), such an expert to be appointed from a list of experts approved by the president of the Law Society of Ireland. The decision of the expert shall be final and binding on both Parties, and he or she shall have power to award costs of the determination against either Party.

**Big Space Solutions**

**Ireland Office**

Unit 16, Mullaghboy Industrial Estate, Navan, Co. Meath, C15 YR76

info@bigspacesolutions.com

Tel: +353 (1) 482 6964

Terms and Conditions



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