



## **CONTRACT HIRE: General Conditions Of Use**

### **1. Definitions**

- a.) The 'Owner' is SRL Traffic Systems Limited (company number 03466427) and includes their successors, assigns or personal representatives. Use of the word 'Owner' in this document necessarily implies that the Owner has title to the Goods.
- b.) The 'Hirer' is the Company or firm using the Owners equipment and includes their successors or personal representatives. The 'Hirer' must be a recognised Traffic Management business.
- c.) 'Equipment' covers all classes of traffic light systems and accessories therefore which the Owner agrees to be used by the Hirer.
- d.) A 'week' shall be 7 consecutive days.

### **2. Extent of Agreement**

No conditions or warranty other than herein specifically set forth shall be implied or deemed to be incorporated in to form part of the agreement.

### **3. Availability of Equipment**

The Equipment is offered subject to being available to the Owner at the time required by the Hirer.

### **4. Loading and Unloading**

The Hirer shall be responsible for unloading and reloading the Equipment at site, and any Driver, or Operator supplied by the Owner shall be deemed to be under the Hirer's control.

### **5. Delivery in Good Order**

Unless notification in writing to the contrary is received by the Owner from the Hirer within one day of the Equipment being supplied, the Equipment shall be deemed to be in good order in accordance with the terms of agreement and to the Hirer's satisfaction. The Hirer will incur delivery and collection fees as detailed on price lists supplied by the Owner.

### **6. General Maintenance of Equipment**

- a.) The Hirer shall be responsible for its safekeeping, use in a workmanlike manner within the Manufacturer's rated capacity and return on the completion of the hire in equal order (fair wear and tear excepted)
- b.) The Hirer shall take all reasonable steps to keep himself acquainted with the state and condition of the Equipment. If Equipment be continued at work or in use in an unsafe and unsatisfactory state, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom.
- c.) The Hirer shall regularly clean the Equipment and return it in a perfectly clean condition. The Hirer shall be responsible for any expense involved in cleaning Equipment incurred by the Owner.

### **7. Breakdown**

- a.) Any breakdown or the unsatisfactory working of any part of the Equipment must be notified immediately to the Owner.
- b.) The Hirer shall be responsible for all expenses involved arising from any breakdown and all loss or damage or misuse of the Equipment, whether by the Hirer or his servants, and for the payment of the hire charges during the period the Equipment is necessarily idle due to such breakdown.
- c.) Under no circumstances shall the Hirer repair or attempt to repair the Equipment unless authorised in writing by the Owner. No allowance for hire charges or for the cost of repairs will be made by the Owner to the Hirer unless such repairs have been authorised in writing by the Owner.

- d.) The Owner warrants the proper functionality of the Equipment for the purpose held out by the Owner save in the event that such failure results from events, circumstances or causes beyond its reasonable control, including but not limited to radio interference from other equipment.

### **8. Other Stoppages**

No claims will be admitted, other than those allowed for under Breakdown, as herein provided, for stoppages through causes outside the Owner's control, including bad weather or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any machine from soft ground.

### **9. Consequential Losses**

- a.) The Owner accepts no liability nor responsibility for any consequential loss or damage due to or arising from the breakdown or stoppage of the Equipment through any cause whatsoever, or through non-arrival arising from accident or breakdown during loading unloading, or transport of the Equipment.
- b.) Without prejudice to clause 9(c), the Owner's maximum aggregate liability for breach of this agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the charges payable by the Hirer.
- c.) Nothing in this agreement shall exclude or in any way limit:
  - (i) either party's liability for death or personal injury caused by its own negligence;
  - (ii) either party's liability for fraud or fraudulent misrepresentation; or
  - (iii) any other liability which cannot be excluded by law.
- d.) These General Conditions of Use set forth the full extent of the Owner's obligations and liabilities in respect of the Equipment and its hiring to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Owner except as specifically stated in these General Conditions of Use. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within these General Conditions of Use, whether by statute, common law or otherwise, is expressly excluded.
- e.) Without prejudice to clause 9(c), the Owner shall not be liable under this agreement for any:
  - (i) loss of profit;
  - (ii) loss of revenue
  - (iii) loss of business; or
  - (iv) indirect or consequential loss or damage,in each case, however caused, even if foreseeable.
- f.) The Owner shall not be in breach of these General Conditions of Use nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, and in such circumstances the Owner shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 3 months, the Hirer may terminate the agreement by giving 10 (ten) Business Days' written notice to the Owner.

### **10. Servicing and Inspection, Repairs, Replacement Batteries and Installation.**

- a.) The Hirer is responsible for the general maintenance of the equipment including the trailer and charger. The Hirer shall at all reasonable times allow the Owner to have access to the Equipment to inspect, test, adjust, repair or replace the same if notified to do so by the Hirer. The maximum period between service/maintenance inspections by the Owner or his Agents shall be 52 weeks, subject to access to the Equipment. The Hirer shall at all reasonable times allow the Owner, his Agents or his Insurers to have access to the Equipment to inspect, test, adjust, repair or replace the same. So far as reasonably possible, such work will be carried out at times to suit the convenience of the Hirer.
- b.) In the event of a breakdown of the Equipment, the Owner shall attend the location of the Equipment at the Hirer's request only once an order number has been provided to the Hirer.

### **Use as part of an ad-hoc system**

- c.) The Hirer shall be responsible for battery exchanges, but in the event it requests the Owner to attend to the same on behalf of the Hirer as part of a larger system, the Hirer shall pay all call-out charges and battery exchange fees applicable from time to time. Where the Hirer has requested the Owner to carry out battery exchanges as part of the hire of the Equipment, the Owner shall do so not more than once every 7 days. Where the Equipment is installed on a Friday, Saturday or Monday, the first battery exchange shall take place the following Friday.
- d.) The Hirer shall be responsible for all system programming and installation carried out by the Owner at the Hirer's request, and a representative of the Hirer shall be required to sign off all installations and programming. The Hirer accepts no liability whatsoever as a result of the Hirer providing incorrect instructions to the Owner regarding the installation or programming of the Equipment. The Hirer shall incur call-out charges in the event that the Owner is required to attend on site to re-program or reinstall the equipment as a result of any changes to the Hirer's requirements from the original installation.
- e.) When the Equipment is used in conjunction with an ad-hoc system, the Owner's Ad-Hoc General Conditions of Use from time to time in force shall apply.
- f.) The Owner reserves the right to charge for waiting time at such rates as may be notified to the Hirer by the Owner from time to time in the event that the Hirer has requested the Owner to attend the Equipment for installation or otherwise and the Hirer has failed to make a representative available at the agreed time.

### **11. Notice of Accidents**

If the Equipment is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Owner by telegram and confirmed in writing to the Owner's office, and in respect of any claim not written the Hirer's agreement for indemnity, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owners consent in writing.

### **12. Hirer's Responsibility for Loss and Damage**

- a.) During the continuance of the hire period the Hirer shall make good to the Owner all loss or damage to the Equipment from whatever cause the same may arise, fair wear and tear excepted (see clause 23 below), and except as provided in Clause 10 herein, and shall also fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or property caused by or in connection therewith whether arising under statute or common law.
- b.) During Owner inspections, any loss or damage to the Equipment will be replaced/repaired and charges invoiced accordingly. Unless otherwise directed, the On-Hire order number will be used.
- c.) When the Equipment is reported lost or stolen or it is not returned when the termination of the hire period is requested by the Hirer, the hire period will be deemed to end when the Hirer pays the Owner the Manufacturers current price list. The Hirer agrees to pay the Owner all costs incurred by the Owner in rectifying the condition of the Equipment returned damaged or unclean. Hire charges will continue until such payment has been received.
- d.) The Equipment will be deemed to be off-hired to the Owner and no longer subject to hire charges only when the all Equipment is returned or collected. Any failure by the Hirer to return any part of the Equipment shall result in all charges applicable to the Equipment in its entirety continuing to be payable subject to the Owner's Ad-Hoc rates from time to time in force, subject to clause 18 of these General Conditions of Use.

### **13. Sub-Letting**

The Hirer shall not be permitted to sub-let or lend the Equipment.

### **14. Change of Site**

The Hirer shall be able to move the Equipment from the site to which it was delivered or consigned.

## **15. Government Regulations**

The Hirer will be responsible from compliance with all regulations issued by the Government of Local Authorities, including Regulations under the Factories Acts, and observance of the Road Traffic Acts should they apply.

## **16. Owner Plates**

Subject to clause 6(c), the Owner may affix his plate or mark on the Equipment indicating that it is his property and the Hirer shall be permitted to do the same.

## **17. Basis of Charging**

- a.) 52 weeks at a weekly contract hire rate invoiced monthly and payable within 30 days of the date of the invoice via standing order.
- b.) Consumable spares will be charged at current prices or an agreed estimate thereof.
- c.) Should any Equipment not be returned to the Owner at the expiry of the hire period, the Owner reserves the right to charge on an ad-hoc basis at the standard ad-hoc charge rates of the Owner from time to time in force.
- d.) All charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.
- e.) All payments to be made by the Hirer under this agreement shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.
- f.) If the Hirer fails to pay any sums payable under this agreement by the due date for payment under this agreement then, without limiting the Owner's rights, the Hirer shall pay interest on such sums for the period from and including the due date of payment up to the actual date of payment, whether before or after judgment. The interest shall be paid at the rate of 8% per annum above the base rate from time to time of Barclays Bank plc.
- g.) Where part only of the Equipment is installed and further items are installed at a later date, the Hirer shall pay for such additional Equipment at the applicable rate from the date it is installed and such charges shall be calculated on a daily basis.
- h.) Disputed invoices or part thereof must be notified to the Owner not less than 14 days before the due date.

## **18. Commencement and Termination of Hire**

- a.) All contractual documentation must be signed and the Hirer must have provided their purchase order number for the duration of the term to the Owner, failing which the Owner reserves the right to charge its ad-hoc rates until such time as the Hirer has returned the signed contract or provided an order number to the Owner.
- b.) The hire period shall commence from the agreed date on the signed contract hire agreement and shall continue until the Equipment is received back at the Owner's named depot or equal.
- c.) Where a Hirer notifies the Owner of termination of hire this can only be accepted where either the Equipment is returned to the Owner's depot or termination of hire is confirmed in writing if the Owner is to collect.
- d.) The Hirer is responsible for ensuring that all receipts for Equipment returned are countersigned by a representative of the Owner.
- e.) Should the Hirer miss one monthly payment, the Owner reserves the right to terminate the Contract and recover the equipment without notice. The Hirer is responsible for payment of the remainder of the 52 weeks Contract in full and any reasonable associated costs the Owner incurs in recovering the equipment.
- f.) The Hirer must give at least 30 days written notice of intention not to renew Contract at the end of the contract period, failing which the hire charges applicable in respect of the Equipment shall continue on a monthly basis at the Owner's Ad-Hoc rates from time to time applicable for each month or part thereof until one full calendar month's notice is given in accordance with this clause 18(f), or a new contract is entered into by the parties.
- g.) The failure of the Hirer to provide a purchase order number shall not affect the validity of these general conditions of use which shall apply in full.

## **19. Termination**

- a) The Owner may, without prejudice to any other right or remedy which may be available to it, terminate this agreement immediately by written notice to the Hirer if:
- (i) the Hirer defaults in any of its payment obligations;
  - (ii) the Hirer commits a material breach of this agreement which breach is irremediable, or which breach (if remediable) is not remedied within ten (10) working days after the service of written notice from the Owner requiring it to do so;
  - (iii) the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - (iv) the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
  - (v) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer; or
  - (vi) 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 Hirer; or
  - (vii) the holder of a qualifying floating charge over the assets of the Hirer has become entitled to appoint or has appointed an administrative receiver;
  - (viii) a person becomes entitled to appoint a receiver over the assets of the Hirer or a receiver is appointed over the assets of the Hirer; or
  - (ix) a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Hirer's assets and such attachment or process is not discharged within 14 days; or
  - (x) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- b.) Upon termination of this agreement, however caused:
- (i) the Owner's consent to the Hirer's possession of the Equipment shall terminate and the Owner may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
  - (ii) without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the Owner on demand all charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 17(f) and any costs and expenses incurred by the Owner in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs). The Owner may at its discretion charge all hire charges for the remainder of the contractual term
- c.) Upon termination of this agreement pursuant to clause 19(a), any other repudiation of this agreement by the Hirer which is accepted by the Owner or pursuant to clause 19(b), without prejudice to any other rights or remedies of the Owner, the Hirer shall pay to the Owner on demand a sum equal to the whole of the hire charges that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the hire period.
- d.) Termination of this agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

## **20. Minimum Period of Contract Hire**

The minimum contract period of hire for the Equipment is 52 weeks. The Hirer is responsible for the payments to the Owner, invoiced monthly, for a minimum period of 52 weeks, whether the Equipment is used or not. Early return of the Equipment to the Owner does not constitute early termination of the hire period.

## **21. Acceptance of Hire Conditions**

The acceptance of any equipment or services from the Owner by the Hirer on site will constitute the acceptance of the Terms and Conditions as laid out in this Contract.

## **22. Payment Terms**

- a.) Payment of the Company's hire charges shall be made by a Hirer with an approved credit account not later than 30 days after the date of each invoice. If any sum remains unpaid after the due date, the payment of all hire charges, no matter how recent, shall become due immediately. The Owner reserves the right to charge a minimum late payment charge of £25 + VAT, and interest in accordance with clause 17(f), to be applied to each invoice that is overdue, per month overdue. The Owner reserves the right to charge all legal costs, costs expenses or any other losses (whether consequential or otherwise) incurred by the Owner in connection with overdue monies or equipment or any other breach by the Hirer of these Conditions of Use. The Owner reserves the right to charge supplementary hire charges at the Owner's Ad-Hoc rates from time to time applicable when payment is overdue by more than 3 working days.

### **Remittance advices**

- b.) Any failure by the Hirer to make payments accompanied by the Remittance Advice in the form set out in the Owner's invoice to the Hirer may result in late payment charges, supplementary charges and interest applying to any sums due until such time as the Owner is able to allocate the payment.

## **23. Renewal**

- a.) At the end date of any fixed 52 week contract period, it is assumed the Hirer requires the contract to automatically renew for a further period of 52 weeks, unless notified to the Owner as per clause 18 above.
- b.) A renewal contract will be forwarded by the Owner at a suitable time shortly before the expiry of the contract hire period. Should the Hirer subsequently decide not to sign the renewal contract:
- (i) the Owner reserves the right to charge additional hire charges at the Ad Hoc prices as per the Owner's current price list in accordance with clause 18(f); and
  - (ii) the 30 calendar day notice period as set out in clause 18(f) shall apply.

## **24. Protection of Owner's Rights**

The Hirer shall not sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Equipment, except as provided under Clause 16 and shall indemnify the Owner against all losses, damage, costs, charges and expenses that may occasioned by any failure to observe and perform this Condition, except in the event of Government requisition.

## **25. Recovery of Stolen Equipment**

The Owner reserves the right to embed discrete tracker units to the Equipment at the Owner's cost. Should the Tracker be activated by notification, and through the endeavours of the Owner the Equipment recovered, there is a standard and automatic recovery fee of £1,000 + VAT payable by the Hirer. Please refer to "Tracker Terms & Conditions" for further information.

## **26. Title, Risk and Insurance**

- a.) The Equipment shall at all times remain the property of the Owner, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this agreement).
- b.) The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on delivery. The Equipment shall remain at the sole risk of the Hirer during the hire period and any further term during which the Equipment is in the possession, custody or control of the Hirer (**Risk Period**) until such time as the Equipment is redelivered to the Owner. During the hire period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain 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.
- c.) All insurance policies procured by the Hirer shall be endorsed to provide the Owner with at least twenty eight (28) days' prior written notice of cancellation or material change

(including any reduction in coverage or policy amount) and shall upon the Owner's request name the Owner on the policies as a loss payee in relation to any claim relating to the Equipment. The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies.

- d.) The Hirer shall give immediate written notice to the Owner in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Hirer's possession or use of the Equipment. If the Hirer fails to effect or maintain any of the insurances required under this agreement, the Owner shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.
- e.) The Hirer shall, on demand, supply copies of the relevant insurance policies (including but not limited to hired-in plant cover) or other insurance confirmation acceptable to the Owner and proof of premium payment to the Owner to confirm the insurance arrangements.
- f.) The Hirer agrees that the Owner may contact the Hirer's insurers direct in the event that the Hirer fails to notify their insurers of any loss or damage to the Equipment or the Hirer becomes insolvent, in which case the Owner shall be entitled to claim against the Hirer's policy as a third party.

## **27 General**

- a.) The Owner reserves the right to assign or subcontract any or all of its rights and obligations under this agreement. The Hirer may not without the Owner's prior written consent assign or dispose of any rights or obligations under this agreement.
- b.) This agreement (comprising these general conditions of use and the hire agreement which refers to them) contains the entire agreement and understanding between the parties, and supersedes any and all prior agreements, arrangements, statements and understandings, and the Hirer acknowledges that it has not relied on any representations, statements or warranties except as set out in these General Conditions of Use, and the Owner accepts no liability for any such statement made prior to the commencement of the agreement.
- c.) If any part of this agreement shall be held to be invalid or unenforceable, it shall not affect the enforceability of any of the remaining provisions.
- d.) Unless otherwise expressly stated in these General Conditions of Use, all notices between the parties must be in writing and sent to the address as stated in the hire agreement.
- e.) Failure or delay by the Owner enforcing an obligation or exercising a right under this agreement does not constitute a waiver of that obligation or right.
- f.) The Owner shall not be liable to the Hirer, nor in breach of the agreement, as a result of the Owner failing to perform its obligations to the Hirer as a result of any matters outside its reasonable control.
- g.) These General Conditions of Use do not confer any rights on any person or party (other than the Hirer or the Owner) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- h.) These General Conditions of Use shall be governed by and in accordance with English law and subject to the exclusive jurisdiction of the English Courts.

**SRL Traffic Systems Limited**

**March 2013.**