

Terms and Conditions for Hire and Sale of Goods to Consumers and Businesses

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1 INTERPRETATION

1.1 In these conditions the following words have the following meanings:

“BUSINESS DAY” a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

“BUSINESS HOURS” the period from 9.00 am to 5.00 pm on any Business Day.

“CONSUMER” an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession;

“CONTRACT” means the contract between the SUPPLIER and the CUSTOMER for the hire or sale and purchase of the GOODS in accordance with these Terms and Conditions;

“CUSTOMER” means the person, firm, company or other organisation hiring HIRE GOODS or purchasing SALE GOODS;

“DEPOSIT” means any non-refundable advance payment required by the SUPPLIER in relation to the HIRE GOODS or SALE GOODS by way of security for performance of the SUPPLIER’s obligations under the CONTRACT;

“FORCE MAJEURE EVENT” means any event outside a party’s reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, default or non-performance of sub-contractors or suppliers, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism,

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- quarantine, disease outbreak, epidemic, pandemic, embargo, law or action taken by a government or public authority and any other similar events;
- “GOODS”** means any machine, article, tool, and/or device together with any accessories specified in a CONTRACT which are hired or sold to the CUSTOMER;
- “HIRE GOODS”** means any GOODS which are hired to the CUSTOMER;
- “HIRE PERIOD”** means the period commencing when the CUSTOMER holds the HIRE GOODS on hire (including Saturdays Sundays and Bank Holidays) and ending upon the happening of any of the following events:
- (i) the physical return of the HIRE GOODS by the CUSTOMER into the SUPPLIER’s possession; or
 - (ii) the physical repossession or collection of HIRE GOODS by the SUPPLIER;
- “LIABILITY”** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
- “ORDER”** means the CUSTOMER’s order for the GOODS, as set out in the CUSTOMER’s completed booking form or the CUSTOMER’s written acceptance of the SUPPLIER’s quotation, as the case may be.
- “RENTAL”** means the SUPPLIER’s charging rate for the hire of the HIRE GOODS which is current from time to time during the HIRE PERIOD;
- “SALE GOODS”** means any GOODS which are sold to the CUSTOMER;
- “SUPPLIER”** means **Fews Marquees Ltd.** at the address stated at the end of these terms and will include its employees, servants, agents and/or duly authorised representatives;
- “SERVICES”** means the SERVICES and/or work (if any) to be performed by the SUPPLIER for the CUSTOMER in conjunction with the hire or sale of GOODS including any delivery and/or collection service in respect of the GOODS.
- “SITE”** means the location at which the equipment is to be delivered and erected as set out in the CONTRACT.
- “SITE PLAN”** means an accurate and measured plan of the SITE showing and identifying the location of any relevant service supply lines, utilities and any immovable obstacles.
- “SPECIFICATION”** means any specification for the GOODS, including any related plans and drawings, that is agreed in writing by the CUSTOMER and the SUPPLIER.
- “VAT”** means value added tax chargeable under the Value Added Tax Act 1994.

2 BASIS OF CONTRACT

- 2.1 These Terms and Conditions apply to the CONTRACT to the exclusion of any other terms that the CUSTOMER seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 **Nothing in this CONTRACT shall exclude or limit any statutory rights of the CUSTOMER which may not be excluded or limited due to the CUSTOMER acting as a CONSUMER. Where the CUSTOMER is acting as a CONSUMER any provision which is marked with an asterisk (*) may, subject to determination by the Courts or any applicable legislation, have no force or effect and if any provision is under the applicable law of the CONTRACT unenforceable in whole or in part or shall have no force or effect the CONTRACT shall be deemed not to include such provisions but this shall not affect the enforceability of the remainder of the CONTRACT.** For further information about your statutory rights contact your local authority Trading Standards Department or Citizens Advice Bureau or if based in the Republic of Ireland your local office of the Director of Consumer Affairs or Citizens Information Centre.
- 2.3 The ORDER constitutes an offer by the CUSTOMER to hire or purchase GOODS in accordance with these Terms and Conditions. The CUSTOMER is responsible for ensuring that the terms of the ORDER and any applicable SPECIFICATION are complete and accurate.
- 2.4 The ORDER shall only be deemed to be accepted when the SUPPLIER issues a written acceptance of the ORDER, at which point the CONTRACT shall come into existence.
- 2.5 *Any samples, drawings, descriptive matter or advertising produced by the SUPPLIER and any descriptions or

illustrations contained in the SUPPLIER's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the GOODS referred to in them. They shall not form part of the CONTRACT nor have any contractual force.

- 2.6 A quotation for the GOODS given by the SUPPLIER shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue. Any quotation issued by the SUPPLIER shall be specific to the SITE and dates described in it and shall not be valid for other locations and/or dates.
- 2.7 GOODS are hired or sold subject to them being available for hire or sale to the CUSTOMER at the time required by the CUSTOMER. The SUPPLIER will not be liable for any loss suffered by the CUSTOMER as a result of the GOODS being unavailable for hire or sale where the GOODS are unavailable due to circumstances beyond the SUPPLIER's control.
- 2.8 Where hire of the HIRE GOODS is to a CUSTOMER who is an individual, unincorporated entity or a two (2) or three (3) partner business, and the hire would be covered by the CONSUMER Credit Act 1974, the duration of the HIRE PERIOD shall not exceed 3 months, after which time the CONTRACT shall be deemed to have automatically terminated. Accordingly, the hire of any HIRE GOODS is not covered by the Consumer Credit Act 1974. In such circumstances, the CUSTOMER shall return the HIRE GOODS to the SUPPLIER on the final day of the 3 month HIRE PERIOD. If the CUSTOMER fails to do this then it shall be liable for any financial loss which this causes the SUPPLIER.
- 2.9 The SUPPLIER'S employees or agents are not authorised to make any representations concerning the GOODS or SERVICES unless confirmed by the SUPPLIER in writing. In entering into the CONTRACT the CUSTOMER acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.10 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the CUSTOMER and the SUPPLIER.
- 2.11 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the SUPPLIER shall be subject to correction without any liability on the part of the SUPPLIER.

3 GOODS

- 3.1 The GOODS supplied to the CUSTOMER by the SUPPLIER under the CONTRACT shall:
- 3.1.1 conform to the SPECIFICATION;
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the SUPPLIER; and
 - 3.1.3 comply with all applicable statutory and regulatory requirements.
- 3.2 Save for as set out in clause 3.1, the SUPPLIER makes no representations and gives no warranties as to the quality, condition, state or description of the GOODS, or their fitness or suitability for any purpose. All implied statutory or common law terms, conditions and warranties as to the GOODS are excluded to the fullest extent permitted by law.
- 3.3 The CUSTOMER acknowledges and agrees that it shall only use the GOODS for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the CUSTOMER.
- 3.4 The CUSTOMER acknowledges that the SUPPLIER shall not be responsible for any loss of or damage to the GOODS or to the SITE or to the CUSTOMER's property arising out of or in connection with any negligence, misuse, mishandling of the GOODS or otherwise caused by the CUSTOMER or its officers, employees, agents and contractors.
- 3.5 This Clause 3.5 shall only apply where the CUSTOMER is a CONSUMER. The SUPPLIER is required by law to provide CONSUMERS with HIRE GOODS that are of satisfactory quality, fit for purpose, and in accordance with descriptions, samples, models and other pre-contract information provided by the SUPPLIER. The

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SUPPLIER is also required to install or set up the HIRE GOODS correctly where that is an agreed part of the SERVICES and, for the purposes of this Clause 3.5, the SUPPLIER's failure to do so will render the HIRE GOODS 'damaged' and/or 'faulty'. If the CUSTOMER discovers any damage (pre-existing) or fault with the HIRE GOODS during the HIRE PERIOD, it shall inform the SUPPLIER as soon as is reasonably possible. The SUPPLIER will use all reasonable endeavours to provide a suitable replacement or, if a repair is possible without causing the CUSTOMER any inconvenience, the SUPPLIER will repair the HIRE GOODS. If the SUPPLIER is unable to replace or repair the HIRE GOODS, or if the CUSTOMER would prefer to reject the damaged or faulty HIRE GOODS, whether before or after a repair or replacement (if the replaced or repaired HIRE GOODS are still damaged or faulty), the SUPPLIER will offer the CUSTOMER a refund equal to the remaining, unused part of the HIRE PERIOD. Alternatively, provided the HIRE GOODS are safe to use in their damaged and/or faulty state, a price reduction may be arranged. Any refund due to the CUSTOMER will be made as soon as is reasonably possible, and in any event within 14 calendar days of the date on which the SUPPLIER agrees that the CUSTOMER is entitled to a refund. Refunds will be made using the same payment method originally used by the CUSTOMER unless the CUSTOMER specifically requests a different method.

3.6 The CUSTOMER acknowledges and accepts that the GOODS are temporary structures and by their nature are not weatherproof to the same standard as a permanent structure. The SUPPLIER does not provide any warranty that the GOODS are completely weatherproof. It is the CUSTOMER's responsibility to notify the SUPPLIER at the time of making their ORDER if they require additional weatherproofing of the GOODS, for example the provision of silicon fillers to reduce potential water ingress.

3.7 The SUPPLIER shall not be liable for GOODS failing to comply with any warranty set out in this clause 3 where the defect arises as a result of the SUPPLIER following any drawing, design or SPECIFICATION supplied by the CUSTOMER.

4 PAYMENT

4.1 The amount of any DEPOSIT, RENTAL, price for SALE GOODS and/or charges for any SERVICES shall be as set out in the ORDER. Where a DEPOSIT is required for the RENTAL of HIRE GOODS or of SALE GOODS it must be paid on account in advance.

4.2 The SUPPLIER shall be entitled to charge an overtime rate as described in the ORDER on a pro rata basis for any time worked by individuals whom it engages on the SERVICES outside BUSINESS HOURS.

4.3 Unless otherwise agreed by the SUPPLIER and documented in the ORDER, payments shall be made by the CUSTOMER by bank transfer to the account nominated by the SUPPLIER at the relevant time set out in the following table:

	Hire of GOODS and SERVICES			SALE of GOODS and SERVICES
	CONSUMER and Corporate Events		Temporary Buildings	Temporary Buildings
	Short-Term	Long-Term		
At the time of acceptance of the CUSTOMER's Order:	DEPOSIT of 30% of total RENTAL charge for HIRE PERIOD	A DEPOSIT to include 1 st week's RENTAL and installation, and subsequent 3 week's RENTAL charge	RENTAL charge DEPOSIT for first month of HIRE PERIOD plus Installation costs	DEPOSIT: 50% of SALE GOODS and SERVICES
Due 28 days before start of HIRE PERIOD:	70%, or balance of the RENTAL charge			
Due on Delivery of SALE GOODS:				40% of SALE GOODS and SERVICES
Due on Completion of Installation SERVICES:				10% of SALE GOODS and SERVICES
Ongoing / Long-Term HIRE PERIOD:		The ongoing monthly RENTAL charge is due 4 weekly in advance of the HIRE PERIOD	100% due monthly in advance of each month of HIRE PERIOD	
Due before collection:			100% of collection costs	

4.4 The SUPPLIER's prices are, unless otherwise stated, exclusive of any applicable VAT for which the

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CUSTOMER shall additionally be liable.

- 4.5 The SUPPLIER reserves the right to issue a final invoice within 30 days of the end of the HIRE PERIOD to reflect any additional charges incurred by the CUSTOMER, for example in respect of additional SERVICES provided beyond those detailed in the relevant ORDER. Payment of the SUPPLIER's final invoice shall be made by the CUSTOMER within 14 days of receipt.
- 4.6 Payment by the CUSTOMER on time under the CONTRACT is an essential condition of the CONTRACT. Payment shall not be deemed to be made until the SUPPLIER has received cleared funds in respect of the full amount outstanding. The SUPPLIER reserves the right to suspend provision of GOODS or SERVICES to the CUSTOMER following a breach of this clause 4.6.
- 4.7 *If the CUSTOMER fails to make any payment in full on the due date the SUPPLIER may charge the CUSTOMER interest (both before and after judgment/decreed) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of the SUPPLIER's bank whichever is higher.
- 4.8 *The CUSTOMER shall pay all sums due to the SUPPLIER under this CONTRACT without any set-off, deduction, counterclaim and/or any other withholding of monies.

5 CHANGES

5.1 The CUSTOMER may request a change to the GOODS and SERVICES in the CONTRACT as follows:

	Hire of GOODS and SERVICES		SALE of GOODS and SERVICES
	CONSUMER and Corporate Events	Temporary Buildings	Temporary Buildings
CUSTOMER change request must be received by SUPPLIER a minimum of:	28 days before the HIRE PERIOD	28 days before the HIRE PERIOD	14 days before the Delivery Date (SERVICES Only)

- 5.2 Whilst the SUPPLIER will use reasonable endeavours to accommodate such requests, all changes will be subject to the availability of GOODS at the time of request.
- 5.3 If the SUPPLIER agrees to a requested change, it will be confirmed to the CUSTOMER in writing.
- 5.4 The price due will change to reflect the changes to the CONTRACT and outstanding sums due will be altered accordingly or the SUPPLIER shall issue an additional invoice as is appropriate payable by the CUSTOMER within 14 days of receipt.
- 5.5 If an agreed change causes a reduction in the applicable price, the SUPPLIER will refund the appropriate sum to the CUSTOMER where this has already been paid to the SUPPLIER.

6 RISK, OWNERSHIP AND INSURANCE

- 6.1 **Risk** in the GOODS will pass immediately to the CUSTOMER when they leave the physical possession or control of the SUPPLIER, save where the CUSTOMER is a CONSUMER in which case risk shall pass from the time the GOODS are delivered to the SITE.
- 6.2 **Risk** in the HIRE GOODS will not pass back to the SUPPLIER from the CUSTOMER until the HIRE GOODS are back in the physical possession of the SUPPLIER. This shall apply even if the SUPPLIER has agreed to cease charging the RENTAL.
- 6.3 **Ownership** of the HIRE GOODS remains at all times with the SUPPLIER. The CUSTOMER has no right, title or interest in the HIRE GOODS except that they are hired to the CUSTOMER.

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6.4 **Ownership** of any SALE GOODS remains with the SUPPLIER until all monies payable to the SUPPLIER by the CUSTOMER for the SALE GOODS have been paid in full.

6.5 Until ownership in the SALE GOODS passes to the CUSTOMER, the CUSTOMER shall:-

- 6.5.1 hold the SALE GOODS on a fiduciary basis as the SUPPLIER's bailee. This means that the CUSTOMER takes possession of and may use the SALE GOODS in accordance with the SUPPLIER's instructions, including as set out in this clause 6.5, but ownership of the SALE GOODS does not transfer to the CUSTOMER unless and until full payment is made as required by clause 6.4;
- 6.5.2 not remove, deface or obscure any identifying mark or packaging on or relating to the SALE GOODS;
- 6.5.3 maintain the SALE GOODS in satisfactory condition; and
- 6.5.4 keep the SALE GOODS insured against all risks for their full price from the time that they are delivered to the SITE.

6.6 The CUSTOMER must not deal with the ownership or any interest in the HIRE GOODS. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending. However the CUSTOMER may sub-hire the HIRE GOODS to a third party with the prior written consent of the SUPPLIER, notwithstanding that as between the CUSTOMER and the SUPPLIER, the CUSTOMER shall remain fully liable for all acts or omissions of any third party to whom it sub-hires the HIRE GOODS pursuant to this clause 6.6.

6.7 Save where otherwise agreed in the ORDER, the SUPPLIER will insure the HIRE GOODS in respect of a hire by a CONSUMER or a hire for a corporate event.

6.8 Where the CUSTOMER is required by the SUPPLIER to insure the HIRE GOODS, it shall:

- 6.8.1 at its own expense obtain and maintain the following insurances during the entire period that the HIRE GOODS are in the CUSTOMER's possession or control (which for the avoidance of any doubt is the period from delivery of the HIRE GOODS to the SITE until collection of the HIRE GOODS by the SUPPLIER):
 - a) insurance of the HIRE GOODS 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 the SUPPLIER may from time to time nominate in writing;
 - b) insurance for such amounts as a prudent owner or operator of the HIRE GOODS would insure for, or such amount as the SUPPLIER 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 HIRE GOODS; and
 - c) insurance against such other or further risks relating to the HIRE GOODS as may be required by law, together with such other insurance as the SUPPLIER may from time to time consider reasonably necessary and advise to the CUSTOMER.
- 6.8.2 pay any proceeds of any such insurance to the SUPPLIER on demand; and
- 6.8.3 not compromise any claim in respect of the HIRE GOODS and/or any associated insurance without the SUPPLIER's written consent.

6.9 The SUPPLIER's Insurance **excludes** the following matters for which the CUSTOMER shall remain liable for:

- 6.9.1 the first £1,000 of any claim, which is payable by the CUSTOMER to the SUPPLIER.
- 6.9.2 Acts of fraud, dishonesty or negligence by the CUSTOMER or their agents.
- 6.9.3 Insurance cover only applies to the HIRE GOODS that are delivered by the SUPPLIER and does not include any equipment provided by the CUSTOMER or their sub-contractor.
- 6.9.4 Failure to report the loss or damage to the HIRE GOODS arising from fire, theft or vandalism to the Police immediately upon discovery and to the SUPPLIER within 12 hours
- 6.9.5 Disappearance, unexplained or inventory shortage.
- 6.9.6 consequential loss.
- 6.9.7 Any breach of these Terms and Conditions which invalidates the SUPPLIER's insurance policy.

7 DELIVERY, COLLECTION, SERVICES AND SITE

- 7.1 The SUPPLIER agrees to deliver GOODS to and/or collect the HIRE GOODS from the CUSTOMER and will do so at its standard delivery cost and such delivery and/or collection will form part of the SERVICES. The CUSTOMER acknowledges and accepts that the SUPPLIER is entitled to use sub-contractors and agents in the provision of installation SERVICES to the CUSTOMER.
- 7.2 The SUPPLIER shall use all reasonable endeavours to deliver GOODS on the delivery date agreed by parties and as set out in the ORDER but time of delivery shall not be of the essence of the CONTRACT.
- 7.3 Delivery is completed when the GOODS are unloaded at the SITE.
- 7.4 The CUSTOMER shall remain responsible and liable for any loss, damage or theft to the HIRE GOODS until the HIRE GOODS are collected by the SUPPLIER.
- 7.5 Where the SUPPLIER provides SERVICES the persons performing the SERVICES are servants of the CUSTOMER and once the CUSTOMER instructs such person they are under the direction and control of the CUSTOMER. The CUSTOMER shall be solely responsible for any instruction, guidance and/or advice given by the CUSTOMER to any such person and for any damage which occurs as a result of such persons following the CUSTOMER's instructions, guidance and/or advice except to the extent that the persons performing the SERVICES are found to be negligent by a court with jurisdiction to make such finding pursuant to clause 15.
- 7.6 The CUSTOMER will allow and/or procure sufficient access to and from the SITE and procure sufficient unloading space, facilities, equipment and access to utilities for the SUPPLIER's employees, sub-contractors and/or agents to allow them to carry out the SERVICES. The CUSTOMER will ensure that the SITE where the SERVICES are to be performed is, where necessary, cleared and prepared before the delivery and collection SERVICES are due to commence.
- 7.7 The SUPPLIER reserves the right at its absolute discretion to suspend the provision of installation SERVICES at the SITE as a result of adverse weather conditions or other risks in the interests of safety of its employees, sub-contractors and/or agents. The SUPPLIER shall use reasonable endeavours to minimise the impact of any such suspension but it shall have no liability to the CUSTOMER as a result of such delay.
- 7.8 It is the CUSTOMER'S responsibility to ensure a SITE PLAN is accurate in terms of measurements and identifying its suitability (flat, level, firm ground) and indicating any trees, buildings, or other immovable objects and any service supply lines (being things such as overhead cables, drains, cables or other services buried beneath the surface or otherwise concealed).
- 7.9 The CUSTOMER shall ensure that all overhead power cables are safely switched off prior to the provision of installation SERVICES at the SITE by the SUPPLIER.
- 7.10 The CUSTOMER shall be solely liable for damage to any service supply lines at the SITE caused during the provision of GOODS or SERVICES by the SUPPLIER where the CUSTOMER has failed to accurately notify the SUPPLIER of their existence and/or location at the SITE, save when the damage has been caused negligently by the SUPPLIER. Save where the CUSTOMER is a CONSUMER, it shall indemnify the SUPPLIER against any claim made against the SUPPLIER by a third party for damage to any service supply lines at the SITE arising out of or in connection with the provision of the GOODS or SERVICES by the SUPPLIER, to the extent that such claim arises out of the CUSTOMER's failure to comply with this clause 7.10.
- 7.11 THE CUSTOMER should not presume that any of the SUPPLIER'S GOODS will be attached to or joined to any buildings within the SITE unless stated in the CONTRACT.
- 7.12 The CUSTOMER must inform the SUPPLIER as soon as possible, and at least fourteen days before the HIRE PERIOD or delivery of GOODS and SERVICES, of any change to the SITE PLAN or if the CUSTOMER expects there to be any change to the SITE PLAN before or during the HIRE PERIOD. If the

SUPPLIER can reasonably accommodate the change they will do so, but this may mean that there will be a change to the RENTAL, monies for SALE GOODS and/or charges for any SERVICES which the SUPPLIER will confirm to the CUSTOMER in writing. If the SUPPLIER cannot accommodate the change, then the SUPPLIER may terminate the CONTRACT by giving written notice to the CUSTOMER and clause 11 shall apply.

- 7.13 If the CUSTOMER does not provide a SITE PLAN it may be necessary for the SUPPLIER to undertake a ground radar survey and utility mapping at additional cost to the CUSTOMER.
- 7.14 If the CUSTOMER does not provide a SITE PLAN to the SUPPLIER when asked, or if there is a change made to the SITE PLAN and the CUSTOMER does not agree to a change in the CONTRACT as a result, then the SUPPLIER may terminate the CONTRACT by giving written notice to you and clause 11 shall apply.
- 7.15 For installation of temporary buildings, the CUSTOMER shall ensure that any concrete pad notified to the CUSTOMER as required by the SUPPLIER, is in place prior to installation to the specification notified by the SUPPLIER to the CUSTOMER,. The SUPPLIER shall have no responsibility or liability arising as a result of any defect in the concrete pad. The SUPPLIER reserves the right to require, at the CUSTOMER's cost and expense, an up-lift pull test to be carried out to ensure that the pad meets the required specification.
- 7.16 All necessary planning permissions for the SITE are the responsibility of the CUSTOMER. The SUPPLIER will not be liable for any costs, losses or damages for the CUSTOMER failing to conform to planning regulations. The CUSTOMER should engage with the local building control department if required. The SUPPLIER can assist with any documentation that may be required with this process at the SUPPLIER's absolute discretion and at the CUSTOMER's cost and expense.
- 7.17 The CUSTOMER must have in force throughout the HIRE PERIOD all necessary permissions from the SITE owner (if the CUSTOMER does not own the SITE) to erect the GOODS on the SITE (and provide documentary evidence of the same to the SUPPLIER upon request);
- 7.18 The CUSTOMER must obtain and have in force throughout the CONTRACT all and any necessary permissions or permits from the Local Authority, or other such authority or organisation such as District Surveyor, Police, Fire Brigade or similar to erect the GOODS on the SITE (and provide documentary evidence of the same to the SUPPLIER upon request);
- 7.19 The CUSTOMER shall inform the SUPPLIER in sufficient time, and in any event no later than 14 days, in advance of the provision of installation SERVICES of all health and safety procedures in place at the SITE and any accreditations required by the SUPPLIER and its employees, sub-contractors and/or agents to access the SITE. The SUPPLIER reserves the right to charge additional standard charges if such requirements mean the SERVICES are materially more time consuming or expensive to provide;
- 7.20 If any SERVICES are delayed, postponed and/or are cancelled due to any acts or omissions of the CUSTOMER or due to the CUSTOMER failing to comply with its obligations:
- 7.20.1 The CUSTOMER shall remain liable to pay the RENTAL for the full HIRE PERIOD unless the SUPPLIER agrees otherwise as a gesture of goodwill;
- 7.20.2 the SUPPLIER shall have no liability to the CUSTOMER for any delay in the performance of its obligations; and
- 7.20.3 the CUSTOMER will be liable to pay the SUPPLIER's additional standard charges from time to time for such delay, postponement and/or cancellation except where the CUSTOMER is acting as a CONSUMER and the delay is due to a FORCE MAJEURE EVENT.
- 7.21 Unless otherwise agreed by the parties in the ORDER, the SUPPLIER shall not provide personnel in the form of on-SITE support during the HIRE PERIOD.
- 7.22 In providing the collection SERVICES the SUPPLIER shall collect and remove from the SITE all items installed

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by it and listed in the installation documentation agreed by the parties at completion of installation of the HIRE GOODS. The SUPPLIER shall not, and shall be under no obligation to, collect, remove or otherwise dispose of any material supplied by parties other than the SUPPLIER or its employees, sub-contractors and/or agents.

7.23 The CUSTOMER acknowledges and accepts that fair wear and tear and damage may be caused to the SITE in the provision of SERVICES and as a result of the placement of GOODS. The SUPPLIER shall be under no obligation to repair any such damage whatsoever, save to the extent caused by its negligence.

8 CARE OF HIRE GOODS

8.1 The CUSTOMER shall:

- 8.1.1 not remove any labels from and/or interfere with the HIRE GOODS, their working mechanisms or any other parts of them and shall take reasonable care of the HIRE GOODS and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the CUSTOMER;
- 8.1.2 not tamper with or alter in any way the HIRE GOODS or any part of the equipment and in particular not affix or suspend from them any item whatsoever, drill holes in any flooring supplied, or connect to any of the gas/electrical provisions left on SITE without written consent of the SUPPLIER;
- 8.1.3 maintain at its own expense the HIRE GOODS in good and substantial repair in order to keep it in as good an operating condition as it was on the delivery (fair wear and tear only excepted);
- 8.1.4 notify the SUPPLIER immediately after any loss and/or damage and/or breakdown to the HIRE GOODS;
- 8.1.5 take adequate and proper measures to protect the HIRE GOODS from theft, damage and/or other risks;
- 8.1.6 keep any part of the GOODS that is described by the SUPPLIER as a tent, marquee or framed structure completely closed and secure with door entries in place and fastened when not in use.
- 8.1.7 permit the SUPPLIER at all reasonable times and upon reasonable notice to inspect the HIRE GOODS including procuring access to any property where the HIRE GOODS are situated;
- 8.1.8 keep the HIRE GOODS at all times in its possession and control and not to remove the HIRE GOODS from the SITE where they have been installed without the prior written consent of the SUPPLIER;
- 8.1.9 notify the SUPPLIER of any change of correspondence address;
- 8.1.10 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the HIRE GOODS required by any legislation, best practice and/or operating instructions except to the extent that the SUPPLIER has agreed to provide them as part of any SERVICES;
- 8.1.11 not do or omit to do anything which the CUSTOMER has been notified will or may be deemed to invalidate any policy of insurance related to the HIRE GOODS;
- 8.1.12 not continue to use HIRE GOODS where they have been damaged and will notify the SUPPLIER immediately if the HIRE GOODS are involved in an accident resulting in damage to the HIRE GOODS, other property and/or injury to any person; and
- 8.1.13 where the HIRE GOODS require fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the HIRE GOODS are properly used by a qualified and competent person.
- 8.1.14 ensure that any employees, agents or Contractors that operate the HIRE GOODS are adequately and sufficiently qualified and trained to operate the HIRE GOODS.

8.2 The CUSTOMER must hand-over the HIRE GOODS, including where appropriate making the HIRE GOODS available for collection by the SUPPLIER, at the end of the RENTAL PERIOD in good working order and condition (fair wear and tear excepted) and in a clean condition together with all insurance policies, licences, registration and other documents relating to the HIRE GOODS.

8.3 The CUSTOMER acknowledges that the SUPPLIER shall not be responsible for any loss of or damage to the HIRE GOODS arising out of or in connection with any negligence, misuse, mishandling of the HIRE GOODS or otherwise caused by the CUSTOMER or its officers, employees, agents and contractors.

9 LOSS OR DAMAGE TO THE HIRE GOODS

9.1 If the HIRE GOODS are damaged, unclean and/or defective except where due to fair wear and tear and/or

an inherent fault in the HIRE GOODS, the CUSTOMER shall be liable to pay the SUPPLIER for the cost of any repair and/or cleaning required to return the HIRE GOODS to a condition fit for re-hire and to pay the RENTAL, until such repairs and/or cleaning have been completed. The SUPPLIER shall use reasonable endeavours to complete repairs and/cleaning within a reasonable timeframe.

9.2 In respect of any HIRE GOODS which are lost, stolen or damaged beyond economic repair during the HIRE PERIOD:

- 9.2.1 the CUSTOMER will pay to the SUPPLIER the new replacement cost less the amount paid to the SUPPLIER under any policy of insurance; and
- 9.2.2 the CONTRACT shall automatically terminate if the HIRE GOODS are lost, stolen or damaged beyond economic repair during the HIRE PERIOD.

9.3 The CUSTOMER shall remain liable to pay the RENTAL for the HIRE GOODS up to and including the date it notifies the SUPPLIER that the HIRE GOODS have been lost, stolen and/or damaged beyond economic repair.

10 CANCELLATION BEFORE DELIVERY

10.1 The CUSTOMER may cancel the CONTRACT at any time before the delivery of the GOODS on and subject to the following conditions:

10.1.1 For CONTRACTS cancelled more than **3 months** before the start of the delivery, THE SUPPLIER will retain the DEPOSIT in full but will refund any other sums paid.

10.1.2 For CONTRACTS cancelled less than **3 months** but more than **1 month** before the start of the delivery, the SUPPLIER will retain the Deposit in full and charge a further cancellation fee of **20%** of the total CONTRACT (which will be retained from sums paid if the CUSTOMER has already paid or for which the CUSTOMER will be billed if the CUSTOMER has not already paid).

10.1.3 For CONTRACTS cancelled less than **1 month** before the start of the delivery, the SUPPLIER will retain the CUSTOMER's DEPOSIT in full and the balance of the CONTRACT price will also be payable (if it has not already been paid).

10.2 Where the HIRE GOODS are manufactured to a bespoke SPECIFICATION commissioned by the CUSTOMER and the CUSTOMER cancels the CONTRACT before the start of the delivery this clause 10.2 shall apply and the CUSTOMER shall pay to the SUPPLIER on demand a sum equal to the whole of the RENTAL that would (but for the cancellation) have been payable if the CONTRACT had continued from the date of such demand to the end of the HIRE PERIOD.

10.3 If the CUSTOMER is in material breach of any of the terms of the CONTRACT (including failure to pay any amounts hereunder), the SUPPLIER reserves the right to terminate the CONTRACT by giving the CUSTOMER written notice and, in such circumstances, the provisions of clause 10 shall be deemed to apply and the SUPPLIER may in addition recover any additional costs and losses from the CUSTOMER resulting from such termination.

11 TERMINATION BY NOTICE DURING THE HIRE PERIOD

11.1 If the HIRE PERIOD has a fixed duration, then subject to the provisions of clause 12 neither the CUSTOMER nor the SUPPLIER shall be entitled to terminate the CONTRACT before the expiry of that fixed period unless agreed with the other party.

11.2 If the HIRE PERIOD does not have a fixed duration either of the CUSTOMER or the SUPPLIER is entitled to terminate the CONTRACT upon giving to the other party any agreed period of notice as described in the ORDER.

11.3 If the HIRE PERIOD does not have a fixed duration and if no period of notice has been agreed or specified, either party shall be entitled to terminate the hire of the HIRE GOODS by giving not less than 28 days' notice to the other.

12 DEFAULT

- 12.1 If the CUSTOMER:-
- 12.1.1 fails to make any payment to the SUPPLIER when due;
 - 12.1.2 breaches the terms of the CONTRACT and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
 - 12.1.3 persistently breaches the terms of the CONTRACT;
 - 12.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the CONTRACT;
 - 12.1.5 pledges, charges or creates any form of security over any HIRE GOODS or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any property of the CUSTOMER, has a bankruptcy petition/petition for sequestration presented against it or the CUSTOMER takes or suffers any similar action in any jurisdiction;
 - 12.1.6 being a company, takes or has taken against it any step or action in connection with its preparation to enter into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 12.1.7 appears to the SUPPLIER (acting reasonably) due to the CUSTOMER's credit rating to be financially incapable of meeting its obligations under the CONTRACT; and/or
 - 12.1.8 appears to the SUPPLIER (acting reasonably) to be about to suffer any of the above events;
- then the SUPPLIER shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 12.2 below.
- 12.2 If any of the events set out in clause 12.1 above occurs in relation to the CUSTOMER then:-
- 12.2.1 except where the CUSTOMER is acting as a CONSUMER the SUPPLIER may enter, without prior notice, any premises of the CUSTOMER (or premises of third parties with their consent) where GOODS owned by the SUPPLIER may be and repossess any GOODS;
 - 12.2.2 the SUPPLIER may withhold the performance of any SERVICES and cease any SERVICES in progress under this and/or any other CONTRACT with the CUSTOMER;
 - 12.2.3 the SUPPLIER may immediately cancel, terminate and/or suspend without LIABILITY to the CUSTOMER the CONTRACT and/or any other CONTRACT with the CUSTOMER;
 - 12.2.4 *where the CONTRACT relates to HIRE GOODS, shall pay to the SUPPLIER on demand a sum equal to the whole of the RENTAL that would (but for the termination) have been payable if the CONTRACT had continued from the date of such demand to the end of the HIRE PERIOD, and/or
 - 12.2.5 *all monies owed by the CUSTOMER to the SUPPLIER shall immediately become due and payable, together with any interest accrued under clause 4.7.
- 12.3 Any repossession of the GOODS shall not affect the SUPPLIER's right to recover from the CUSTOMER any monies due under the CONTRACT and/or any damages in respect of any breach which occurred prior to repossession of the GOODS.
- 12.4 Upon termination of the CONTRACT the CUSTOMER shall immediately:-
- 12.4.1 return the GOODS to the SUPPLIER or, as requested by the SUPPLIER, make the GOODS available for collection by the SUPPLIER or its authorised representatives (the CUSTOMER granting or procuring for the SUPPLIER or its authorised representative the right to enter the SITE without trespass); and
 - 12.4.2 pay to the SUPPLIER all arrears for RENTALS, Charges for any SERVICES, monies for any SALE GOODS and/or any other sums payable under the CONTRACT including, but not limited to, the cost of returning the GOODS.

13 LIMITATIONS OF LIABILITY

- 13.1 The SUPPLIER will not be liable to the CUSTOMER for any failure or delay in performing obligations

Chessgrove Park, Ditchford Bank Road Hanbury,
Bromsgrove, Worcestershire, B60 4HS

t. 01527 821789
e. info@fewsmarquees.co.uk

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temporarystructures.co.uk

FMT30

where such failure or delay results from a FORCE MAJEURE EVENT;

13.2 Where the CUSTOMER is a CONSUMER:

- 13.2.1 The SUPPLIER are responsible to the CUSTOMER for foreseeable loss and damage caused by the SUPPLIER. If the SUPPLIER fails to comply with these terms, it is responsible for loss or damage the CUSTOMER suffers that is a foreseeable result of the SUPPLIER breaking this contract or the SUPPLIER failing to use reasonable care and skill, but the SUPPLIER is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both the SUPPLIER and the CUSTOMER knew it might happen, for example, if it was discussed during the sales process.
- 13.2.2 The SUPPLIER does not exclude or limit in any way its liability to the CUSTOMER where it would be unlawful to do so. This includes liability for death or personal injury caused by the SUPPLIER's negligence or the negligence of the SUPPLIER'S employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of the CUSTOMER's legal rights in relation to the GOODS as summarised at clause 3.5; and for defective products under the Consumer Protection Act 1987.
- 13.2.3 When the SUPPLIER is liable for damage to the CUSTOMER's property. If the SUPPLIER provides SERVICES in the CUSTOMER's property, the SUPPLIER will make good any damage to the CUSTOMER's property caused by the SUPPLIER while doing so, save for such damage as described in clause 7.23. However, the SUPPLIER is not responsible for the cost of repairing any pre-existing faults or damage to the CUSTOMER's property that the SUPPLIER discovers while providing the SERVICES.
- 13.2.4 The SUPPLIER is not liable for business losses. If the CUSTOMER is a consumer the SUPPLIER only supplies the GOODS for domestic and private use. If the CUSTOMER uses the GOODS for any commercial, business or re-sale purpose the SUPPLIER's liability to the CUSTOMER will be limited as set out clauses 13.3 to 13.7.

13.3 The following provisions shall apply only to the extent that the CUSTOMER is not a CONSUMER:

- 13.4 *The SUPPLIER shall not be liable in contract or tort (including negligence) by reason of any breach by the SUPPLIER of any term of these Terms and Conditions or other express term of the CONTRACT, or SUPPLIER breach of any implied warranty, condition or other term, or any negligent or innocent misrepresentation, or any negligence or other duty at common law, for any:

- 13.4.1 loss of use or unavailability of GOODS and SERVICES
- 13.4.2 physical damage to the SITE;
- 13.4.3 interruption to business;
- 13.4.4 loss of income, revenue, business;
- 13.4.5 loss of business opportunity;
- 13.4.6 loss of profit or contracts;
- 13.4.7 loss of anticipated savings;
- 13.4.8 wasted expenditure; or
- 13.4.9 any indirect, special or consequential loss, damage, costs, expenses or other claims; arising from any act or omission by SUPPLIER or any of SUPPLIER agents or employees or sub-contractors or any other person or entity in connection with the performance of the SUPPLIER'S obligations arising under these Terms and Conditions and the CONTRACT.

- 13.5 *Except to the extent expressly stated in clause 3.1 all terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are excluded.

- 13.6 *Nothing in these Terms and Conditions is intended to or will exclude or limit the SUPPLIER'S liability for death or personal injury caused by the SUPPLIER'S negligence (including that of the SUPPLIER'S employees, agents or sub-contractors) or for fraud or fraudulent misrepresentation or any other liability which cannot be excluded or restricted by law.

13.7 *Without prejudice to any of the above provisions of this Clause 13, the SUPPLIER'S total liability under these Terms and Conditions shall be limited to the value of the CONTRACT, that is, the total price payable by the CUSTOMER to the SUPPLIER.

14 GENERAL

- 14.1 Upon termination of the CONTRACT the provisions of clauses 4.4, 4.7, 4.8, 8, 9.1, 9.3 and shall continue in full force and effect.
- 14.2 The CUSTOMER shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this CONTRACT.
- 14.3 If the CUSTOMER has any questions or complaints it may contact the SUPPLIER by telephoning its office on the telephone number or at the email address listed below.
- 14.4 *The CUSTOMER agrees to indemnify and keep indemnified the SUPPLIER against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the SUPPLIER and arising from or due to any breach of CONTRACT, any tortious act and/or omission and/or any breach of statutory duty by the CUSTOMER.
- 14.5 *No waiver by the SUPPLIER of any breach of this CONTRACT shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of this CONTRACT and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 14.6 The SUPPLIER shall have no LIABILITY to the CUSTOMER for any delay and/or non-performance of a CONTRACT to the extent that such delay is due to any FORCE MAJEURE EVENT. If the SUPPLIER is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance. Where the CUSTOMER is a CONSUMER, if there is a risk of substantial delay the CUSTOMER may contact the SUPPLIER to end the contract and receive a refund for any GOODS the CUSTOMER has paid for but not received.
- 14.7 The SUPPLIER may subcontract or delegate any or all of its obligations relating to the provision of SERVICES under the CONTRACT to any third party, provided that it gives prior written notice of such subcontract or delegation to the CUSTOMER.

15 THIRD PARTY RIGHTS

- 15.1 All third party rights are excluded and no third parties shall have any rights to enforce the CONTRACT by virtue of the Contracts (Rights of Third Parties) Act 1999. This shall not apply to any finance company with whom the SUPPLIER has an outstanding finance agreement relating to the HIRE GOODS. Such finance company shall, subject to the SUPPLIER's consent, have the right to enforce this CONTRACT as if they were the SUPPLIER.

16 LAW AND JURISDICTION

- 16.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 16.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

17 ALTERNATIVE DISPUTE RESOLUTION

- 17.1 Alternative Dispute Resolution (ADR) is a process where an independent body considers the facts of any dispute between parties and seeks to resolve the dispute without court proceedings. The SUPPLIER



is a member of MUTA (company name The Performance Textiles Association Limited) whose registered office is at 10B Red House Yard, Gislingham Road, Thornham Magna, Suffolk IP23 8HH). The SUPPLIER adheres to MUTA's "Safe Use and Operation of Temporary Demountable Fabric Structures" code which is available at www.muta.org.uk. MUTA offers a mediation service and the CUSTOMER can contact MUTA on 01379 788673 or by email at info@muta.org.uk to ask that MUTA considers a complaint or dispute.

17.2 Alternatively, to clause 17.1, the CUSTOMER can contact another ADR provider. Details can be found at <https://www.tradingstandards.uk/commercial-services/adr-approved-bodies>. However, the SUPPLIER does not necessarily agree to use a particular ADR provider.

17.3 In the event that either the CUSTOMER or SUPPLIER is not happy with the outcome of ADR, either may still commence legal proceedings.

Fews Marquees Ltd.

Registered in England and Wales

Company registration number: 03930939.

Registered address: Chessgrove Park Ditchford Bank Road, Hanbury, Bromsgrove, England, B60 4HS

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