



Conditions of Hire/Rental ("Conditions")

1. GENERAL

- 1.1. In these Conditions (a) "the Company" means Dynamic Load Monitoring (UK) Ltd (company number: 02924110); (b) "the Customer" means the person placing the order for the hire of Goods; (c) "the Goods" means the goods the subject of a contract between the Company and the Customer incorporating these Conditions; and (d) headings are inserted for the sake of convenience and do not affect the construction of these Conditions.
- 1.2. Unless otherwise agreed by the Company, the Goods are hired on these Conditions to the exclusion of any terms or conditions stipulated by the Customer and of any representations, warranties or communications not expressly incorporated herein or the Company's order acceptance.
- 1.3. Where these Conditions form part of a quotation submitted by the Company to the Customer such a quotation shall be open for acceptance by the Customer for the period stated therein or, where no period is stated, for the period of 30 days after its date and, if not so accepted, shall be automatically withdrawn.
- 1.4. No person has authority on behalf of the Company to vary these Conditions except a Director of the Company and only in writing.
- 1.5. Unless otherwise agreed by the Company the Goods may be partially or wholly outsourced at the Company's discretion.
- 1.6. These Conditions shall be construed and shall take effect in all respects in accordance with English law and all disputes or differences concerning or relating thereto shall be subject to the exclusive jurisdiction of the courts of England and Wales.
- 1.7. Any notice given hereunder by post, fax or email to the recipient at his or its principal or registered office shall be deemed to have been properly served at the time when in the ordinary course of post or transmission it would reach its destination. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 1.8. Any and all regulatory requirements must be declared by the customer at time of request for quote, this will include but is not limited to document storage and notification to certification bodies.
- 1.9. The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under these Conditions.
- 1.10. These Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.
- 1.11. No failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 1.12. If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Conditions.
- 1.13. Unless otherwise expressly stated, these Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract between the parties.

2. DELIVERY

- 2.1. The time and place of delivery shall be as specified in the Company's order acknowledgement or as otherwise communicated to the Customer and the means of delivery shall be at the absolute discretion of the Company.
- 2.2. The Company shall use reasonable endeavours to meet delivery dates but shall be under no liability for failure to deliver on a specified date or within a specified period. Time of delivery shall not be of the essence.
- 2.3. The Company shall pay to the Company the costs of packaging and delivering the Goods in addition to the hire charges.
- 2.4. If the Customer fails to accept delivery of the Goods the Company shall be entitled without prejudice to any other rights it may have to store the Goods at the cost and risk of the Customer.

3. PERIOD OF HIRE

- 3.1. The Company shall not, other than in the exercise of its rights under these Conditions or applicable law, interfere with the Customer's quiet possession of the Goods.
- 3.2. The period of hire commences when the Goods passes from the possession of the Company or its authorised representative and the signature of a delivery note by the Customer or their representative or purported representative shall be conclusive proof of the passing of possession and acceptance of these Conditions.
- 3.3. Unless terminated earlier in accordance with clause 14, the period of hire shall be for the period confirmed in writing between the parties and if no such period is specified, shall continue until the possession of the Goods passes back to the Company or its authorised representative and it is the responsibility of the Customer to obtain from the Company or its authorised representative written acknowledgment of receipt of the Goods which shall alone constitute evidence of the return of the Goods to the Company but without prejudice to any outstanding obligations of the Customer which under the provisions of these Conditions continue notwithstanding the return of the Goods to the Company.

4. PRICES

- 4.1. The Company reserves the right to vary any hire charges quoted for Goods to take account of variations in cost, including, but not by way of limitation, cost of materials, manufacture, labour, transport and any new or increased taxes, duties or other imposts.
- 4.2. Where an exchange rate is included in a quotation or acknowledgement the price is directly related to that exchange rate and any change in the rate between the time of acknowledgment or quotation and delivery will be included at the time of invoice where the size of such change in exchange rate is greater than 1 per cent.
- 4.3. Prices quoted are net ex works for UK trade and FOB British port for export trade and exclusive of delivery and VAT and only apply to the total quantities and delivery dates and rates specified.

5. PAYMENT AND INTEREST

- 5.1. The Goods (and any instalment in the case of delivery by instalments) shall be paid for within thirty days of the date of the relevant invoice if the Customer has an approved credit account with the Company.
- 5.2. Customers originating from outside the UK or without a credit account will be required to make payment in advanced for the hire of the Goods for the agreed period and if the rental time increases beyond this period further advance payment will be required.
- 5.3. The prompt payment of the Company's accounts is a condition precedent of further deliveries and (without prejudice to any other remedies the Company may have in respect of overdue payments) the Company reserves the right to charge interest (as well after as before judgement) at the rate of 4 per cent per annum above the Lloyds Bank Plc base rate for the time being in force on all sums overdue for payment by the Customer hereunder.

6. TITLE TO THE GOODS

- 6.1. The Goods shall remain the sole and absolute property of the Company as legal and equitable owner and the Customer shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to these Conditions)
- 6.2. It is the responsibility of the Customer to satisfy itself that upon receipt of the Goods that they are in good working order and undamaged condition and the signature of the delivery note shall be conclusive evidence that the Customer has received the Goods in good working order and undamaged condition. The Company will not be responsible for any defects or deficiencies in the Goods unless an appropriate specific note has been made on the delivery note and such note has been signed by the Company or its authorised representative.
- 6.3. The Company may at any time recover and re hire the Goods if payment of the hire charges is overdue and for this purpose the Company's employees or agents may enter upon the Customer's or other premises upon which the Goods are situated to recover them. The Company may exercise like rights of recovery and entry so long as any payment owed by the Customer on any account is overdue.
- 6.4. The Company does not warrant that the equipment is suitable for the particular or any purpose for which it is or maybe required.
- 6.5. The Customer shall not be deemed to be the Company's agent for any purpose and (without prejudice to sub-clause 12.1 hereof) shall indemnify the Company against any liability that the Company may incur to third parties (whether in contract, tort or otherwise, and including all the Company's expenses attributes thereto) in connection with the Goods, other than liability which would have arisen if the preceding paragraphs of this condition had not formed part of the contract of hire.

7. CUSTOMER RESPONSIBILITIES

- 7.1. The Customer shall:
 - 7.1.1. take such steps (including compliance with all safety and usage instructions provided by the Company) as may be necessary to ensure, so far as is reasonably practicable, that the Goods are at all times safe and without risk to health when being used, cleaned or maintained by a person at work;
 - 7.1.2. maintain at its own expense the Goods in good and substantial repair in order to keep them in as good an operating condition as they were on the delivery date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Goods;
 - 7.1.3. ensure that the Goods are kept and operated in a suitable environment, used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions.
 - 7.1.4. make no alteration to the Goods and shall not remove any existing component (or components) from the Goods without the prior written consent of the Company, unless the component (or components) is (or 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 or advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Goods shall vest in the Company immediately on installation;
 - 7.1.5. keep the Company fully informed of all material matters relating to the Goods;
 - 7.1.6. not assign transfer or otherwise part with possession of the Goods during the period of hire without the prior written consent of the Company and at all times keep the Goods in the possession or control of the Customer;
 - 7.1.7. not take or permit to be taken the Goods out of the United Kingdom, nor use or permit it to be used for any abnormal or hazardous assignments without prior written consent of the Company.
 - 7.1.8. permit the Company or its duly authorised representative to inspect the Goods at all reasonable times and for such purpose to enter any premises at which the Goods may be located, and shall grant reasonable access and facilities for such inspection;
 - 7.1.9. maintain operating and maintenance records of the Goods and make copies of such records readily available to the Company, together with such additional information as the Company may reasonably require;
 - 7.1.10. not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
 - 7.1.11. not without the prior written consent of the Company, attach the Goods to any land or building so as to cause the Goods to become a permanent or immovable fixture on such land or building. If the Goods do become affixed to any land or building then the Goods must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Goods from any land or building and indemnify the Company against all losses, costs or expenses incurred as a result of such affixation or removal;
 - 7.1.12. not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Company in the Goods and, where the Goods have become affixed to any land or building, the Customer must take all necessary steps to ensure that the Company may enter such land or building and recover the Goods 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 the Company of any rights such person may have or acquire in the Goods and a right for the Company to enter onto such land or building to remove the Goods;
 - 7.1.13. not suffer or permit the Goods to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Goods are so confiscated, seized or taken, the Customer shall notify the Company and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Goods and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - 7.1.14. not use the Goods for any unlawful purpose;
 - 7.1.15. ensure that at all times the Goods remain identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Goods;
 - 7.1.16. deliver up the Goods at the end of the hire period at such address as the Company requires, or if necessary allow the Company or its representatives access to any premises where the Goods are located for the purpose of removing the Goods; and
 - 7.1.17. not do or permit to be done anything which could invalidate the insurances referred to in Clause 10.
- 7.2. The Customer acknowledges that the Company shall not be responsible for any loss of or damage to the Goods 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, and the Customer shall indemnify the Company in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of, or in connection with any failure by the Customer to comply with these Conditions.

8. LOSS OF OR DAMAGE TO GOODS

- 8.1. Throughout the period of hire the Customer shall be responsible for the safe keeping of the Goods and shall be liable to the Company for all loss or damage to the equipment howsoever caused.
- 8.2. The Customer shall notify the Company of any loss of or damage to any of the Goods on hire within 48 hours of such a loss or damage being sustained.
- 8.3. The Customer shall not carry out or attempt to carry out any repairs to damaged Goods without the prior written authority of the Company.
- 8.4. The Customer shall pay to the Company all costs incurred by it in carrying out repairs to damaged Goods.
- 8.5. The Customer shall pay to the Company the full cost of replacing any lost Goods or any Goods which are in the reasonable opinion of the Company uneconomic to repair, with new goods of the same or similar specification to that Goods which has been lost or damaged.
- 8.6. During any period in respect of which the Customer has not already paid to the Company the cost of hiring any Goods which shall be lost or damaged as mentioned above and until such time as payment shall be made to the Company pursuant to conditions 8.4 or 8.5 above the Customer shall pay to the Company compensation for the loss of use of the Goods lost or damaged at a rate equivalent to charges currently made by the Company for the hire of such Goods.

- 9. LIABILITY**
- 9.1. Nothing in these Conditions limits any liability which cannot legally be limited, including liability for:
- 9.1.1 death or personal injury caused by negligence;
- 9.1.2 fraud or fraudulent misrepresentation; and
- 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979
- 9.2. Subject to clause 9.1, the Company's liability in terms of these Conditions is in lieu and to the exclusion of all other warranties, conditions or obligation imposed by statute or otherwise in relation to the quality or description of the Goods or their fitness for any particular purpose, and all liability for any indirect or consequential loss (howsoever arising) is hereby expressly excluded.
- 9.3. Subject to clause 9.1, the Company's total liability to the Customer shall not exceed the hire charges paid by the Customer in the 12 month period prior to the liability arising.
- 10. INSURANCE**
- 10.1. The risk of loss, theft, damage or destruction of the Goods shall pass to the Customer on delivery. The Goods shall remain at the sole risk of the Customer during the duration of the hire period and any further term during which the Goods are in the possession, custody or control of the Customer until such time as the Goods are redelivered to the Customer.
- 10.2. Unless prior to the commencement of the period of hire the Company has received from the Customer's insurers a declaration in a form acceptable to the Company that the Customer has arranged insurance to the satisfaction of the Company or if at any time the Company receives notification of the lapsing or variation of the Customer's said insurance or fails to receive prompt and sufficient confirmation that such insurance remains in effect then the Company shall be entitled (but not obliged) to arrange insurance of the Goods for its full replacement value against all damage or loss consequential or otherwise including without prejudice to any payment of monies to the Company pursuant to conditions 8.4, 8.5 & 8.6 above and also for Public Liability against claims made by third parties arising from failure, use or mis-use of the Goods. If the Company has not received the said declaration or if it receives notification of lapsing or variation of the insurance or fails to receive the prompt and sufficient confirmation as to the insurance remaining in effect as referred to above then in addition to all other sums payable by the Customer to the Company there shall also be due and payable by the Customer to the Company an additional sum of 12% of the total hire cost.
- 11. INTELLECTUAL PROPERTY**
- 11.1. The Customer shall not claim ownership of any patents, trademarks, trade names, copyrights or designs in relations to the Goods and shall not take any action which might infringe and patent, trademark, trade name, copyright design or other form of protection for any intervention discovery improvement design mark or logo in relation to the Goods and the Customer shall indemnify the Company and keep it indemnified from and against all costs claims liabilities or proceedings damages and expenses arising or indirectly as a result of any breach of the foregoing obligation by the Customer.
- 11.2. The Customer shall notify the Company immediately of any infringement or apparent or threatened infringement of or any actions claims or demands in relation to any patent, trademark, trade name, copyright design or other form of protection for any invention discovery improvement design mark or logo in relations to the Goods and the Customer shall provide the Company at the Company's expense with all assistance which the Company may reasonably require in connection therewith including but not limited to the prosecution of any actions which the Company may deem necessary for the protection of any rights in relation to the Goods and if so requested by the Company in relation to any claim or action brought against the Customer shall authorise the conduct of the same and of all negotiations for the settlement of the same by the Company.
- 11.3. The Customer shall indemnify the Company against all claims for infringement or alleged infringement of third parties patent or other intellectual property rights, and all costs and expenses incurred in connection therewith, arising from the execution of the Customer's order.
- 12. CANCELLATION BY THE CUSTOMER**
- 12.1. In respect of the Customer cancelling the hire within 24 hours of the date when the hire was due to commence the Customer shall indemnify the Company against any loss of profit and any other costs and expenses of any kind which the Company may have reasonably incurred in connection with such hire.
- 13. INDEMNITY FOR THIRD PARTY CLAIMS**
- 13.1. The Customer shall indemnify the Company against all claims for personal injury, loss or damage to property brought against the Company by third parties arising from the Goods unless such injury, loss or damage is solely attributable to the negligence of the Company, its employees or agents.
- 14. FORCE MAJEURE**
- 14.1. The Company shall not be liable to the Customer or incur any penalties for the failure to perform or for the delay in the performance of its obligations hereunder where such failure or delay is due wholly or in part directly or indirectly to causes beyond its reasonable control including but not by way of limitation the failure of a third party to hire the Goods or deliver them to the Company.
- 14.2. The Customer shall not be entitled to avoid any liability to the Company for the Customer's failure to perform or for any delay in the performance of any of the Customer's obligations hereunder whether by attributing such failure or delay wholly or in art directly or indirectly to causes beyond the Customer's reasonable control or otherwise and the Customer shall indemnify the Company against any liability arising directly or indirectly from such attribution including any professional costs incurred in advertising or assisting the Company in relation to the same.
- 15. TERMINATION BY THE COMPANY**
- 15.1. Without affecting any other right or remedy available to it, the Company may terminate the hire contract with immediate effect by giving written notice to the Customer if:
- 15.1.1. the Customer fails to pay any amount due under these Conditions on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 15.1.2. the Customer commits a material breach of any of this Conditions, which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so;
- 15.1.3. the Company after using all reasonable endeavours is unable to hire the Goods to the Customer;
- 15.1.4. the Company after using all reasonable endeavours does not obtain satisfactory credit and trade references within thirty days of the Company's acceptance of the Customer's order; or
- 15.1.5. the Customer (being a business/trade customer) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up, having a receiver appointed to any of its assets or ceasing to carry on business or (being an individual) is the subject of a bankruptcy petition, application or order.
- 15.2. On expiry or termination of the contract, however caused (save for a termination in accordance with clause 15.1.3 or 15.1.4):
- 15.2.1. the Company's consent to the Customer's possession of the Goods shall terminate;
- 15.2.2. the Company may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Goods and for this purpose may enter any premises upon which the Goods are located; and
- 15.2.3. without prejudice to any other rights or remedies of the Company, the Customer shall pay to the Company on demand:
- 15.2.3.1. all hire payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to Clause 5.3; and
- 15.2.3.2. any costs and expenses incurred by the Company in recovering the Goods or in collecting any sums due under the contract (including any storage, insurance, repair, transport, legal and remarketing costs).
- 15.3. On termination of the contract, however caused (save for a termination in accordance with clause 15.1.3 or 15.1.4), without prejudice to any other rights or remedies of the Company, the Customer shall pay to the Customer on demand a sum equal to the whole of the hire payments 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, less a discount for accelerated payment to be determined by the Company acting reasonably.
- 15.4. The sums payable pursuant to Clause 15.3 shall be agreed compensation for the Company's loss and shall be payable in addition to the sums payable pursuant to Clause 15.2.3. Such sums may be partly or wholly recovered from any deposit that is taken if applicable.
- 15.5. Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the contract shall remain in full force and effect.
- 15.6. Termination or expiry of the contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.