

# JOHN NIXON LTD – STANDARD TERMS AND CONDITIONS – SCOPE AND APPLICATION

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## Scope and Application

This document contains John Nixon Ltd's standard terms and conditions when John Nixon Ltd is (a) purchasing and/or hiring goods and services from our third party suppliers, (b) hiring goods to our customers and/or (c) selling goods to our customers.

For all definitions used in this document, please see the definitions section below.

Where John Nixon Ltd agrees to purchase and/or hire Supplier Plant from a Supplier, the Purchase and Hire Conditions set out at Section 1 of this document will apply to the Contract.

Where John Nixon Ltd agrees to hire John Nixon Plant to a Customer, the Hire Conditions set out at Section 2 of this document will apply to the Contract.

Where John Nixon Ltd agrees to sell John Nixon Plant to a Customer, the Sale Conditions set out at Section 3 of this document will apply to the Contract.

The Purchase and Hire Conditions, Hire Conditions and/or Sale Conditions apply to the Contract to the exclusion of any other terms that the Supplier or Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## JOHN NIXON LTD – STANDARD TERMS AND CONDITIONS - DEFINITIONS

**Business Day**" means any day other than Saturday, Sunday or any other public holiday;

A **"Consumer Contract"** means a contract entered into with a person acting in his own capacity and not for or on behalf of any business or trade entity;

**"Contract"** means:

- a) in relation to the Hire Conditions, the Customer's order for Plant and John Nixon's acceptance of the Customer's order, including any service level agreement, incorporating the Hire Conditions;
- b) in relation to the Purchase and Hire Conditions, the Order and the Supplier's acceptance of the Order incorporating the Purchase and Hire Conditions and the CPA Conditions; and/or
- c) in relation to the Sale Conditions, any contract made between the parties that incorporates the Sale Conditions;

**"CPA Conditions"** means the Construction Plant-hire Association model conditions for the hiring of plant as amended or supplemented by the Purchase and Hire Conditions;

**"Customer"** means any company, firm, person, corporation or public authority and includes their permitted successors, assignees or personal representatives who is a customer of John Nixon and who the Plant is sold or hired to or the Services are provided to;

**"Customer's Site"** means the Customer's premises or such other location notified in writing by the Customer to John Nixon for the delivery of the Plant;

**"Data Protection Legislation"** means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (EU) 2016/679) and any other directly applicable European Union regulation relating to privacy;

**"day"** means 8 (eight) hours or if the day is a Friday it shall be 7 (seven) hours, unless otherwise specified in the Contract;

**"Delivery"** means delivery of the Goods in accordance with condition 11.4 of the Purchase and Hire Conditions and **"Delivered"** shall be interpreted accordingly;

**"Delivery Address"** means the address stated on the Order or such other address as is agreed in writing between John Nixon and the Supplier;

**"Goods"** means the goods (or any part of them) to be bought by John Nixon from the Supplier as set out in the Order;

**"Group"** means in relation to a company, that company, its subsidiaries (as defined in section 1159 of the Companies Act 2006), any company of which it is a subsidiary (its holding company) and any other subsidiaries of such holding company; and each company in a group is a **Group Company**;

**"Hire Conditions"** means John Nixon's standard conditions of hire to a Customer as set out in Section 2;

**"hire period"** means the period commencing from the time when the Plant actually leaves John Nixon's depot or place where last employed or used, and shall continue until the Plant is received back at John Nixon's named depot or other agreed location. The hire period includes Saturdays, Sundays or Bank or other statutory holidays;

**"John Nixon"** means John Nixon Limited, company number 921639 or any Group Company trading as any of Nixon Hire, Nixon Sales, Nixon Hire Direct and Nixon Hire Extra and any other associated trading names;

**"John Nixon Plant"** means all classes and type of plant, tools, machinery, accommodation, toilets, vehicles, equipment and accessories or part therefore, which John Nixon agrees to hire or sell to the Customer in accordance with the Hire Conditions and/or Sale Conditions;

**"Main Contract"** means any Contract between John Nixon and the Customer for the re-hire of Plant or supply of Services;

**"Order"** means John Nixon's written (which shall include email) or verbal instruction to hire the Plant and/or to buy the Services and/or to purchase the Goods, incorporating the Purchase and Hire Conditions;

**"Purchase and Hire Conditions"** means John Nixon's standard conditions of purchase and hire from a Supplier as set out in Section 1;

**"Sale Conditions"** means John Nixon's standard conditions of sale to a Customer as set out in Section 3;

**"Services"** means the services to be provided by the Supplier to John Nixon, the Customer or the other person nominated John Nixon as set out in the Order;

**"Specification"** means any specification for the Goods, including any plans, designs and drawings that is supplied to the Supplier by John Nixon;

**"Supplier"** means the person, firm or company who accepts the Order under the Contract;

**"Supplier Plant"** means all classes of plant, machinery, vehicles, equipment, accessories and spares to be hired from the Supplier by John Nixon; and

**"working week"** means the period from starting time on Monday to finishing time on Friday.

## SECTION 1

### JOHN NIXON LTD – STANDARD CONDITIONS OF PURCHASE AND HIRE FROM A SUPPLIER

1. **Interpretation**
- 1.1 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.2 A reference to one gender includes a reference to the other gender.
- 1.3 Condition headings do not affect the interpretation of these Purchase and Hire Conditions.
2. **Application of Terms**
- 2.1 Subject to any variation under condition 2.5, these Purchase and Hire Conditions and the CPA Conditions (subject to condition 2.2) are the only conditions upon which John Nixon is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions, that the Supplier seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.2 Insofar as the Contract relates to the hire of Supplier Plant by John Nixon, and subject always to the provisions of condition 3, the terms of the CPA Conditions shall apply to the Contract save as amended or disapplied by the terms of these Purchase and Hire Conditions. In the event of any conflict or inconsistency between these Purchase and Hire Conditions and the CPA Conditions, the terms of these Purchase and Hire Conditions shall prevail.
- 2.3 Each Order for Supplier Plant, Goods or Services by John Nixon from the Supplier shall be deemed to be an offer by John Nixon to hire Supplier Plant or purchase Goods or Services subject to these Purchase and Hire Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.4 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.5 These Purchase and Hire Conditions and each Order apply to all John Nixon's dealings with the Supplier and any variation to these Purchase and Hire Conditions and any Order shall have no effect unless expressly agreed in writing and signed by a director of John Nixon.
3. **CPA Conditions**
- 3.1 References to provisions of the CPA Conditions in these Purchase and Hire Conditions shall be references to the relevant provision in the July 2011 version or the equivalent provision in any updated version of the CPA Conditions.
- 3.2 References in the CPA Conditions to the "Customer" shall be deemed to be references to John Nixon and references to the "Owner" shall be deemed to be references to the Supplier.
4. **Re-hire**
- The Supplier acknowledges and agrees that, where applicable, John Nixon is hiring the Supplier Plant and purchasing the Services for the purpose of re-hiring the Supplier Plant to its Customers and for the Services to be provided to its Customers. The terms of CPA Condition 15 shall not apply in this event. The Supplier shall promptly notify John Nixon if the Supplier Plant is directly returned to the Supplier by any of John Nixon's Customers.
5. **Supplier's Obligations in relation to the Goods**
- 5.1 The Supplier shall ensure, warrant and represent that the Goods shall:
  - 5.1.1 correspond with their description and any applicable Specification;
  - 5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended), fit for any purpose held out by the Supplier or made known to the Supplier by John Nixon expressly or by implication, and in this respect John Nixon relies on the Supplier's skill and judgement;
  - 5.1.3 be free from all defects in design, material and workmanship and remain so for the later of:
    - 5.1.3.1 24 (twenty four) months after Delivery; or
    - 5.1.3.2 if applicable, for the duration of any manufacturer's warranty or guarantee provided with the Goods.
  - 5.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 5.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 5.3 John Nixon shall have the right to inspect and test the Goods at any time before Delivery.
- 5.4 If following such inspection or testing John Nixon considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 5.1, John Nixon shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 5.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and John Nixon shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 5.6 To the extent it is legally able, the Supplier shall assign the benefit of any manufacturer's warranty or guarantee to John Nixon in relation to the Goods on Delivery.
6. **Supplier's Obligations in relation to the Supplier Plant**
- 6.1 The Supplier shall ensure that the Supplier Plant shall:
  - 6.1.1 be in good and safe working order and fit for hire;
  - 6.1.2 be in compliance with all relevant legislation and regulatory requirements; and
  - 6.1.3 be properly maintained and serviced regularly in accordance with the manufacturer's and John Nixon's recommendations.
- 6.2 The Supplier agrees to provide to John Nixon or the Customer on Delivery of the Supplier Plant, detailed, accurate, complete and up to date operation instructions and/or an instruction manual from the manufacturer containing all information required by John Nixon and/or the Customer to operate the Supplier Plant in a safe manner.
- 6.3 The Supplier shall fulfil any Order for Supplier Plant submitted by John Nixon. In the event that the Supplier is unable to fulfil an Order for Supplier Plant it shall notify John Nixon immediately.
- 6.4 Subject to condition 6.5, the Supplier shall collect any off-hired Supplier Plant or equipment within three Business Days of notification of off-hire by John Nixon or its Customer and provide a collection note to John Nixon and its Customer on collection.
- 6.5 John Nixon shall notify the Supplier if a Customer requires the Supplier Plant to be collected sooner than in accordance with condition 6.4 and the Supplier shall use its best endeavours to comply with such shorter timescale.
- 6.6 The Supplier Plant shall be at the Supplier's risk with effect from the earlier of:
  - 6.6.1 the period notified to the Supplier by John Nixon in accordance with condition 6.5; and
  - 6.6.2 the expiry of the period of three Business Days in accordance with condition 6.4, and condition 23(a) of the CPA Conditions shall be amended accordingly.
7. **Supplier's Obligations in relation to the Services**
- 7.1 The Supplier shall provide the Services and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
- 7.2 The Supplier shall:
  - 7.2.1 co-operate with John Nixon in all matters relating to the Services and comply with any instructions given to it by John Nixon or Customer in connection with the Services from time to time;
  - 7.2.2 use all due skill, diligence and care in the performance of the Services and ensure that they are carried out by suitably qualified staff and in a professional and courteous manner at all times;
  - 7.2.3 provide the Services within the time periods agreed between John Nixon and the Supplier in writing and if no time period is agreed within a reasonable period;
  - 7.2.4 observe, and ensure that all employees, consultants, agents and subcontractors which it engages in relation to the Services observe all health and safety rules and regulations and any other reasonable security requirements that apply at any premises at which the Services are being provided as notified to it by John Nixon or a Customer;
- 7.2.5 notify John Nixon as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- 7.2.6 before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to the Services.
8. **Damage to Supplier Plant and Repair of Supplier Plant**
- 8.1 John Nixon shall use reasonable endeavours to procure that it and its Customers shall use and operate the Supplier Plant with reasonable skill and care and that the Supplier Plant shall be returned to the Supplier at the end of the hire period in a similar condition to that it was supplied in, fair wear and tear excepted.
- 8.2 In the event of any of the Supplier Plant being actually damaged whilst in John Nixon's or Customer's possession and control, John Nixon shall notify the Supplier in writing of the nature and extent of damage as soon as reasonably practicable following it becoming aware.
- 8.3 The Supplier shall be responsible for carrying out or arranging the repair of any damaged Supplier Plant. Subject to conditions 8.7 to 8.10, any repairs shall be carried out at the Supplier's cost and expense.
- 8.4 The Supplier shall carry out or arrange for the repairs to be carried out at the address notified to it by John Nixon unless the Supplier, acting reasonably, notifies John Nixon in writing (setting out the reasons) that the repairs need to be carried out at another location. Where a Customer requests that repairs take place off site, the Supplier shall comply with all such reasonable requests.
- 8.5 Where required by John Nixon, the Supplier shall provide replacement Supplier Plant to the Customer for the period during which the Supplier Plant is being repaired.
- 8.6 The Supplier shall, at its own cost and expense, immediately replace any Supplier Plant which is identified by John Nixon (acting reasonably) as unreliable, inoperable or unsafe. The Supplier undertakes that it shall not hire any such Supplier Plant to John Nixon or any of its Customers, after it has been identified as unreliable, inoperable or unsafe by John Nixon.
- 8.7 If the Supplier believes that the damage to the Supplier Plant has been caused by the failure of the Customer to comply with the written instructions given by the Supplier to John Nixon for the operation of the Supplier Plant in accordance with condition 6.2, the Customer's negligence or misuse of the Supplier Plant, the Supplier shall provide to John Nixon reasonable documentary evidence to support such an allegation (including a written report and/or digital photographs) and request that John Nixon bears the cost and expense of any repairs. If John Nixon agrees that the cost and expense of the repair should be borne by it or the Customer, it shall, subject to condition 8.12, pay the costs and expense to the Supplier.
- 8.8 The cost of any damage to the Supplier Plant caused by fair wear and tear shall be the responsibility of the Supplier. Subject to condition 8.12, the cost of all other reasonable repairs shall be paid for by John Nixon.
- 8.9 In the event that any Supplier Plant is visibly damaged at the end of the hire period, the Supplier will agree the extent of the damage with the Customer and record it on the collection note which shall be signed on behalf of the Customer. The Supplier shall provide a copy of such collection note to John Nixon within one Business Day of collection of the Supplier Plant. Within three Business Days of providing the repair cost estimate to John Nixon, the Supplier shall confirm to John Nixon the cost of repairing the Supplier Plant together with details of the age and original purchase price of the relevant item of Supplier Plant to enable assessment of the damage.
- 8.10 John Nixon shall inform the Supplier within five Business Days of receipt of a notification of the repair or replacement cost of whether the Supplier should repair or replace the damaged Supplier Plant. In the event that no such notification is received within 5 (five) Business Days, the Supplier shall be entitled to repair the Supplier Plant and recharge the cost of such repair to John Nixon provided always that the Supplier Plant shall be deemed to be off-hire from such date.
- 8.11 John Nixon undertakes and agrees that it shall:
  - 8.11.1 seek to recover any costs in respect of damage to the Supplier Plant from its Customer under the terms of the CPA Conditions; and
  - 8.11.2 where possible, involve the Supplier in any discussions and negotiations with its Customer.
- 8.12 The liability of John Nixon to the Supplier under this condition 8 shall be limited to the amount that John Nixon is able to recover from its Customer in respect of any damage.
- 8.13 Condition 9 of the CPA Conditions shall be amended accordingly.
9. **Lost or Stolen Supplier Plant**
- 9.1 John Nixon shall inform the Supplier in writing as soon as reasonably practicable of it becoming aware that any Supplier Plant has been lost or stolen.
- 9.2 The Supplier shall notify John Nixon within three Business Days of receipt of notification pursuant to condition 9.1 of the estimated replacement cost.
10. **Indemnity**
- The Supplier shall indemnify and keep John Nixon indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by John Nixon as a result of or in connection with:
  - 10.1 defective quality or materials of any Goods;
  - 10.2 any Goods or Supplier Plant not being fit for their purpose;
  - 10.3 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Supplier Plant or the Goods;any claim made against John Nixon in respect of any liability, loss, damage, injury, cost or expense sustained by John Nixon's employees or agents or by any Customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from any breach by the Supplier, its agents or employees of their obligations under the Data Protection Legislation; and any claim made against John Nixon in respect of any liability, loss, damage, injury, cost or expense sustained by John Nixon's employees or agents or by any Customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Supplier Plant or the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier including any breach of the terms of the Main Contract to the extent the same arises from the act, omission, default or negligence of the Supplier.
11. **Delivery**
- 11.1 The Supplier Plant shall be delivered to the Delivery Address or to such other place of delivery as is notified by John Nixon in writing prior to delivery of the Supplier Plant.
- 11.2 The Goods shall be delivered to the Delivery Address or to such other place of delivery as is notified by John Nixon in writing prior to delivery of the Goods.
- 11.3 The Supplier shall ensure that:
  - 11.3.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 11.3.2 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 11.4 The Supplier shall deliver and off-load the Goods at its own risk as directed by John Nixon or the Customer. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Address ("Delivery").
- 11.5 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 (twenty eight) days of the Order.
- 11.6 The Supplier shall ensure that each delivery of the Supplier Plant and/or Goods is accompanied by a delivery note which shows the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to

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- be delivered and shall send a faxed or scanned copy of all delivery notes to John Nixon within 1 (one) Business Day of delivery. The delivery note must not set out details of the price to be paid by John Nixon to the Supplier, and must be signed by the Supplier and the Customer.
- 11.7 Unless otherwise stipulated by John Nixon in the Order, deliveries shall only be accepted by John Nixon and/or the Customer during the hours of 9am and 5pm on a Business Day.
- 11.8 If any Goods or Supplier Plant are not delivered on the due date then, without prejudice to any other rights which it may have, John Nixon reserves the right to:
- 11.8.1 cancel the Contract in whole or in part and/or reject the Supplier Plant and/or Goods;
- 11.8.2 withhold or suspend payment for the Supplier Plant and/or Goods until such time as delivery of the Supplier Plant and/or Goods is made;
- 11.8.3 recover from the Supplier any expenditure reasonably incurred by John Nixon in obtaining the Goods or Supplier Plant in substitution from another supplier; and
- 11.8.4 claim damages for any additional costs, loss or expenses incurred by John Nixon which are in any way attributable to the Supplier's failure to deliver the Goods or Supplier Plant on the due date (including any liquidated damages stipulated by John Nixon from time to time).
- 11.9 Where John Nixon agrees in writing to accept delivery of Goods by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle John Nixon at its option to treat the whole Contract as repudiated.
- 12. Title and Risk**  
Title and risk in the Goods shall pass to the Customer on completion of Delivery.
- 13. Insurance**
- 13.1 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance John Nixon, such insurances and at such levels as are necessary to cover such heads of liability as may arise under or in connection with the Contract, and shall, on John Nixon's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 13.2 Where the Contract relates to the hire of Supplier Plant by John Nixon for the purpose of re-hiring the Supplier Plant to John Nixon's Customers, John Nixon shall ensure that its Customers maintain in force, with a reputable insurance company, reasonable insurance to cover such liability that may arise under or in connection with the Contract.
- 14. Price**
- 14.1 The price of each item of Supplier Plant, Goods and/or Service to be supplied by the Supplier shall be as stated in the Order and, unless otherwise agreed in writing by John Nixon, shall be inclusive of value added tax.
- 14.2 No variation in the price or extra charges shall be accepted by John Nixon unless it is agreed in writing by John Nixon and the Supplier.
- 15. Payment**
- 15.1 The Supplier shall invoice John Nixon within five Business Days of the end of each month for all Supplier Plant and Goods Delivered or collection of the Supplier Plant (as detailed in the Order) and Services provided to John Nixon or its Customers during the previous month.
- 15.2 Subject to condition 15.4, John Nixon shall settle and pay any invoice within 60 (sixty) days of the end of the month in which the invoice was dated, provided that time for payment shall not be of the essence of the Contract.
- 15.3 Without prejudice to any other right or remedy, John Nixon reserves the right to set off any amount owing at any time from the Supplier to John Nixon against any amount payable by John Nixon to the Supplier under the Contract.
- 15.4 If John Nixon disputes any invoice, it shall notify the Supplier in writing and the parties shall negotiate in good faith to resolve the dispute promptly. While any dispute is unresolved, John Nixon shall be entitled to withhold payment of the amount of the invoice that is disputed.
- 16. Termination**
- 16.1 John Nixon shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
- 16.1.1 the Supplier commits a material breach of any of the terms and conditions of the Contract; or
- 16.1.2 any distress, execution or other process is levied upon any of the assets of the Supplier or the Customer; or
- 16.1.3 the Supplier or the Customer convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or the Customer or notice of intention to appoint an administrator is given by the Supplier or the Customer or their directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or the Customer or for the granting of an administration order in respect of the Supplier or the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier or the Customer; or
- 16.1.4 the Supplier or the Customer ceases or threatens to cease to carry on its business; or
- 16.1.5 the financial position of the Supplier or the Customer deteriorates to such an extent that in the opinion of John Nixon the capability of the Supplier or the Customer adequately to fulfil its obligations under the Contract or the contract between the Customer and John Nixon has been placed in jeopardy; or
- 16.1.6 the contract between John Nixon and the Customer is terminated for any reason.
- 16.2 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of John Nixon accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 17. Remedies**
- 17.1 Without prejudice to any other right or remedy which John Nixon may have, if any Supplier Plant or Goods or Services are not supplied in accordance with, or the Supplier fails to comply, any of the terms of the Contract John Nixon shall be entitled to avail itself of any one or more of the following remedies at its discretion:
- 17.1.1 to rescind the Order;
- 17.1.2 to refuse to pay for the Supplier Plant, the Goods or the Services in whole or in part;
- 17.1.3 at John Nixon's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Supplier Plant or the Goods or the provision of the Services or to supply replacement Supplier Plant or Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 17.1.4 to carry out at the Supplier's expense any work necessary to make the Supplier Plant or the Goods or the Services comply with the Contract; and
- 17.1.5 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.
- 17.2 John Nixon shall not in any circumstances have any liability to the Supplier for any indirect or consequential liabilities (both of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss) howsoever arising.
- 17.3 Condition 12 of the CPA Conditions shall not apply.
- 18. Assignment**
- 18.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of John Nixon.
- 18.2 John Nixon may assign the Contract or any part of it to any person, firm or company at any time and without having to obtain the Supplier's prior consent.
- 19. Force Majeure**
- 19.1 Neither party shall be in breach of the Contract nor liable for any failure or delay in performance of any obligations under this Contract arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**), including but not limited to acts of God, flood, earthquake, windstorm or other natural disaster, war or threat of war, terrorist attack, fire, explosion, interruption or failure of utility service, including but not limited to electric power, gas or water or strikes or lockouts (save where such strikes solely affect that party's workforce).
- 19.2 Any party that is subject to a Force Majeure Event shall not be in breach of this Contract provided that:
- 19.2.1 it promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- 19.2.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- 19.2.3 it has used reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 19.3 If the Force Majeure Event prevails for a continuous period of more than three months, the party not affected by the Force Majeure Event may terminate this Contract by giving 14 (fourteen) days' written notice to the other parties. On the expiry of this notice period, this Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Contract occurring prior to such termination.
- 20. Variations**  
No variation of the Contract shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.
- 21. Waiver and Remedies**
- 21.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law
- 22. Severance**
- 22.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 22.2 If a provision of the Contract (or part of any provision) is found to be illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 23. Entire Agreement**
- 23.1 The Contract and any documents referred to in it constitute the whole agreement between the parties and supersede all previous agreements between the parties relating to its subject matter.
- 23.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).
- 23.3 Nothing in these Purchase and Hire Conditions shall limit or exclude the liability of either party for:
- 23.3.1 death or personal injury resulting from negligence; or
- 23.3.2 fraud or fraudulent misrepresentation; or
- 23.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 23.3.4 breach of section 2 of the Consumer Protection Act 1987; or
- 23.3.5 the indemnities contained in condition 10; or
- 23.3.6 any other liability which it would be illegal or unlawful to exclude or limit liability in respect of.
- 24. No Partnership**  
Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, constitute any party the agent of another party for any purpose or authorise any party to make or enter into any commitments for or on behalf of the other party. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 25. Rights of Third Parties**  
A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 26. Communications**
- 26.1 All communications between the parties about the Contract shall be in writing and delivered by hand, sent by pre-paid first class post to the registered office of the relevant party or such changed address as shall be notified to the other party in accordance with this condition. Communications shall be deemed to have been received:
- 26.2.1 if sent by pre-paid first class post, three Business Days after posting (exclusive of the day of posting); or
- 26.2.2 if delivered by hand, on the day of delivery.
- 27. Governing Law and Jurisdiction**
- 27.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England.
- 27.2 The parties irrevocably agree that, subject to as provided below, the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter. Nothing in this clause shall limit the right of John Nixon to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

## SECTION 2

### JOHN NIXON LTD – STANDARD CONDITIONS OF HIRE TO A CUSTOMER

#### 1. EXTENT OF CONTRACT

All quotations from John Nixon for the hire of John Nixon Plant shall only be valid for a period of 24 (twenty four) hours from being issued and such quotations shall not constitute an offer. No conditions other than specifically set out in these Hire Conditions shall be deemed to be incorporated in or to form part of the Contract or shall otherwise govern the relationship between John Nixon and the Customer in relation to the hire and/or use of any particular John Nixon Plant by the Customer. Each order (either written, including email, or verbal) constitutes an offer by the Customer to hire Plant in accordance with these Hire Conditions. The order shall only be deemed to be accepted when John Nixon accepts (including by email or telephone) such order, at which point and on which date the Contract shall come into existence. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of John Nixon which is not set out in the Contract. Any samples, drawings, descriptive matter, online publications or content or advertising issued by John Nixon and any description of the John Nixon Plant contained in John Nixon's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the John Nixon Plant described in them. They shall not form part of the Contract or have any contractual force or effect. The Contract does not create any right enforceable by or purport to confer any benefit on any person other than John Nixon and Customer except that a person who is a successor to or an assignee of the rights of John Nixon or is deemed to become a party to the Contract after the date of succession or assignment (as the case may be). In relation to a Consumer Contract where these Hire Conditions apply, the Customer's statutory rights as a consumer are not affected.

#### 2. ACCEPTANCE OF THE JOHN NIXON PLANT

Acceptance of the John Nixon Plant at the Customer's Site implies unqualified deemed acceptance of these Hire Conditions unless otherwise agreed in writing by John Nixon. John Nixon shall not, other than in the exercise of its rights under these Hire Conditions or applicable law, interfere with the Customer's quiet possession of the John Nixon Plant. The Customer acknowledges that the John Nixon Plant is fit for purpose and is in good condition.

#### 3. UNLOADING AND LOADING

The Customer shall be solely responsible for the unobstructed and unrestricted access and (unless otherwise agreed in writing or verbally by John Nixon), for unloading and loading of the John Nixon Plant at the Customer's Site. Any personnel supplied by John Nixon for such unloading and/or loading shall be deemed to be under the direction and control of the Customer and the Customer shall be responsible for their health and safety. Such personnel shall for all purposes in connection with their employment in the unloading and/or loading of the John Nixon Plant be regarded as the servants or agents of the Customer (but without prejudice to any of the provisions of clause 12) who alone shall be responsible and liable for all claims arising in connection with unloading and/or loading of the John Nixon Plant by, or with the assistance of, such personnel.

#### 4. DELIVERY IN GOOD ORDER AND MAINTENANCE:

##### INSPECTION REPORTS

- a) The Customer shall sign any delivery note provided by John Nixon at the time of delivery of the John Nixon Plant. Unless notification in writing or verbally to the contrary is received by John Nixon from the Customer at the time of the John Nixon Plant being delivered to the Customer's Site and damage to the John Nixon Plant to be incorporated on the delivery note, at the time of delivery, the John Nixon Plant shall be deemed to be in good order, save for either an inherent material fault or a material fault not ascertainable by reasonable examination, in accordance with Hire Conditions of the Contract; provided that where John Nixon Plant requires to be erected on the Customer's Site by John Nixon, the periods above stated shall be calculated from the date of completed erection of John Nixon Plant.
- b) The Customer shall at all times during the hire period be responsible for the John Nixon Plant's safe keeping, use in a workmanlike manner within the manufacturer's rated capacity and return to the place specified the John Nixon Plant on the completion of the hire in the same condition as when the John Nixon Plant was delivered to the Customer (fair wear and tear excepted).
- c) The Customer shall at all times during the period keep themselves fully acquainted, aware and up to date with the state and condition of the John Nixon Plant. If such John Nixon Plant be continued at work or in use in an unsafe and unsatisfactory state or environment, the Customer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising there from.
- d) The current inspection report required under the relevant legislation, or a copy thereof, shall be supplied by John Nixon to the Customer if requested by the Customer and returned on completion of hire.

##### 5. DELIVERY AND COLLECTION

Delivery or collection undertaken by John Nixon is not included in the hire charges and shall be charged as an extra cost to the Customer (as determined by John Nixon from time to time). Where John Nixon has agreed under an order to provide transport for the John Nixon Plant to or from the Customer's Site:

- a) the Customer shall provide or ensure that unobstructed, secure, safe and unrestricted access to and over the Customer's Site is in every respect available and suitable for the vehicle used for transporting the John Nixon Plant;
- b) if the ground (including any private access road or track) is soft, unsecure, unsafe or unsuitable for the John Nixon Plant to work on, travel or be transported over without timbers or equivalents the Customer shall immediately supply and lay suitable timbers or equivalents in a suitable position for the John Nixon Plant to travel over, work on or be transported over, including for the purpose of delivery and collection;
- c) where the hire is for lifting equipment, any sound timber or other material supplied by John Nixon for use with outriggers and/or stabilisers is provided solely to assist the Customer and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the lifting equipment under the imposed loading;
- d) the Customer shall load or unload the John Nixon Plant at the Customer's Site with all skill, care and diligence and shall not suffer or permit the transport vehicle to be unduly delayed on the Customer's Site. John Nixon may make a charge for any delays on the Customer's Site (as determined by John Nixon from time to time);
- e) the Customer shall indemnify and keep indemnified John Nixon against any claims for injury to persons or loss of or damage to property (including land), during loading or unloading of the John Nixon Plant and for any breach by the Customer of this clause 6;
- f) John Nixon shall not be liable for the consequences of any delay in the delivery or collection at the Customer's Site howsoever arising;
- g) not less than 24 (twenty four) hours notice, in writing, must be given to John Nixon if the Customer wishes the John Nixon Plant to be collected by John Nixon and the Customer shall obtain an off hire reference number from John Nixon. When John Nixon Plant out on hire is to be collected from its location by John Nixon, on the reasonable request of the Customer, the Customer remains responsible for the safekeeping and security of the John Nixon Plant until it obtains an off hire reference number and collection is effected being not more than 10 (ten) working days after the date the John Nixon Plant is placed off hire. The Customer shall sign any collection note provided by John Nixon at the time of collection of the John Nixon Plant by John Nixon; and
- h) when the John Nixon Plant is delivered by John Nixon's in the absence of the Customer or his representative, the delivery note shall be forwarded to the Customer's address as soon as reasonably practicable and deemed to be conclusive proof of delivery of the John Nixon Plant listed thereon in good clean working order.

##### 6. SERVICING AND INSPECTION

The Customer shall at all reasonable times allow John Nixon, his Agents or his insurer's access to the John Nixon Plant to inspect, test, adjust, repair or replace the John Nixon Plant.

#### 7. HANDLING / USE OF THE JOHN NIXON PLANT

- a) The John Nixon Plant shall be used only for the purpose for which it is designed. The Customer shall be responsible for ensuring the observance of all proper safeguards and precautions against accidents in connection with the use of the John Nixon Plant, and for ensuring its use by the Customer's authorised persons only.
- b) The Customer shall, and shall ensure its authorised persons shall, use the John Nixon Plant in a skilful, diligent and proper manner and the Customer shall be responsible for its day to day maintenance and servicing (including but not limited to it greasing and oiling). Unless otherwise agreed by John Nixon, the Customer must ensure the correct grade of fuel, oil and grease is used in the John Nixon Plant and shall be solely responsible for and shall indemnify and keep indemnified John Nixon in respect of all damages, losses, costs and expenses arising as a result of the wrong grade of fuel, oil or grease being used.
- c) The Customer will be responsible for compliance with relevant regulations issued and updated from time to time by the Government or Local Authorities or the European Parliament, including but not limited to regulations under Directive 94/20/EC, the Factories Acts, Health and Safety at Work Act and observance of the Road Traffic Acts should they apply, including the cost of Road Fund Licences and any insurances made necessary thereby, save that if and during such time as the John Nixon Plant is travelling, whether for full or part journey from Owner to site and site to Owner under its own power with a driver supplied by John Nixon, John Nixon and not the Customer shall be responsible as aforesaid.
- d) The Customer is responsible for checking the calibration of the John Nixon Plant on each occasion before use. Final determination of the suitability of the John Nixon Plant for any specific use is the Customer's responsibility and the Customer assumes all risk and liability in this regard.
- e) The Customer shall indemnify and keep indemnified John Nixon for injury to persons or loss of or damage to property caused by the Customer's use of the John Nixon Plant or the Customer's failure to operate the John Nixon Plant in a safe and proper manner.
- f) The Customer shall indemnify and keep indemnified John Nixon against any and all liability, charges, fines, costs and expenses incurred or imposed as a result of the Customer's use of the John Nixon Plant during the hire period, including but not limited to any parking fines, excess charges incurred under the Road Traffic Regulations Act 1984, any liability arising under any applicable Congestion Charge Order, any breach of any legislation or regulations covering vehicle excise and any charges made by HM Revenue & Customs as a result of seizure of the John Nixon Plant.
- g) The Customer shall be responsible for ensuring that the John Nixon Plant is not used or stored in an environment that could result in the John Nixon Plant being affected by any type of corrosion or erosion. The Customer shall be solely responsible for all costs and expenses payable in order to repair the John Nixon Plant damaged as a result of the Customer using or storing the John Nixon Plant in a corrosive or erosive environment. Where the John Nixon Plant has a toilet facility (including but not limited to welfare vans), the Customer shall be solely responsible for the lawful and safe discharge and disposal of all waste, which for the avoidance of doubt shall be classified as trade waste. The Customer shall be solely responsible for obtaining and maintaining all necessary licences, consents and authorisations relating to the discharge and disposal of all such waste.

#### 8. BREAKDOWN SERVICING AND REPAIRS

- a) The Customer shall immediately inform John Nixon of any breakdown or unsatisfactory working of the John Nixon Plant. John Nixon shall use reasonable endeavors to deal and assist with necessary repairs as quickly as is reasonably possible and in accordance with the Hire Conditions of any applicable warranty or guarantee relating to the John Nixon Plant in need of repair. Claims for breakdown allowance shall only be allowed from the date and time that notice is received, providing that such a breakdown is advised immediately by the Customer and confirmed within three days in writing by the Customer. For the avoidance of doubt, John Nixon shall, at its sole discretion, decide whether to repair or replace the John Nixon Plant.
- b) Reasonable allowance for the hire charges and for the reasonable cost of repairs that have been expressly authorised by John Nixon, in writing, will be made to the Customer for any stoppage due to breakdown of the John Nixon Plant caused by the development of either a material inherent fault or a material fault not ascertainable by reasonable examination, or fair wear and tear, and for all stoppages for normal running repairs in accordance with the Hire Conditions of the Contract.
- c) The Customer shall not, except for the changing of any tyre and repair of punctures, repair the John Nixon Plant (and in relation to any vehicles, the Customer shall not incur any liability for repairs in excess of £25 (twenty five pounds)) without the written or verbal authority of John Nixon. The changing of any tyre and repair of punctures are however the responsibility of the Customer who should arrange for them to be changed/repared without awaiting authorisation from John Nixon. The Customer is responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture.
- d) The Customer shall take all necessary steps to keep fully acquainted aware and up to date with the state and condition of the John Nixon Plant. If the John Nixon Plant be continued at work or in use after it is known by the Customer to be in an unsafe or unsatisfactory state or environment the Customer shall be solely responsible for any further damage, loss or accident.
- e) The Customer shall be solely responsible for all cost and expense involved arising from any breakdown and all loss or damage incurred by John Nixon due to negligence, misdirection or misuse of the John Nixon Plant whether by the Customer or other persons and for the payment of hire charges at John Nixon's standard rate during the period the John Nixon Plant is necessarily idle and unavailable due to such breakdowns or damage.
- f) John Nixon will be responsible for the cost and expense of repairs to the John Nixon Plant involved in breakdowns as a result of fair wear and tear (which shall not include corrosive or erosive damage to the John Nixon Plant).
- g) Except when the John Nixon Plant on-hire to the Customer is a welfare van, in which case this clause shall not apply, where the John Nixon Plant has been in the possession of the Customer for a period in excess of the recommended service interval for that item, howsoever that interval is expressed (including but not limited to the hours and time) it is the responsibility of the Customer to inform John Nixon of the need for the John Nixon Plant to be serviced and the location of the Customer's Site so that John Nixon can arrange to attend the Customer's Site and service the John Nixon Plant. In the event of the Customer failing to inform John Nixon of the need for the John Nixon Plant to be serviced or the Customer preventing John Nixon from accessing the Customer's Site to service the John Nixon Plant, the Customer shall indemnify and agree to keep indemnified John Nixon against any claim howsoever arising as a result of the Customer's continued use of the John Nixon Plant, beyond the recommended service interval.

#### 9. STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" as herein provided), for stoppages through causes outside John Nixon's control, including but not limited to bad weather or ground conditions nor shall John Nixon be responsible for the cost or expense of recovering any of the John Nixon Plant from soft ground.

#### 10. LOSS OF OTHER JOHN NIXON PLANT DUE TO BREAKDOWN

Each item of the John Nixon Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or items (whether the property of John Nixon or otherwise) through any cause whatsoever, shall not entitle the Customer to compensation or allowance for the loss of working time by any other unit or units of the John Nixon Plant working

## SECTION 2

### JOHN NIXON LTD – STANDARD CONDITIONS OF HIRE TO A CUSTOMER

in conjunction therewith; provided that where two or more items of the John Nixon Plant are expressly hired together as a unit, such items shall be deemed a unit for the purpose of breakdown.

#### 11. LIMITATION OF LIABILITY

Except for liability on the part of John Nixon which is expressly provided for in the Contract (including these clauses), this clause 11 shall set out John Nixon's total liability in respect of all losses under or in connection with the Contract:

- a) John Nixon shall have no liability or responsibility for any loss or damage of whatever nature due to or arising through any cause beyond his reasonable control including late or non arrival of the John Nixon Plant at the location of hire;
- b) John Nixon shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Customer's loss of profit, loss of use of the John Nixon Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and
- c) whenever the Contract (including these clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Customer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made; provided nothing in these Hire Conditions shall limit or exclude John Nixon's liability for fraud, death, personal injury or any other liability which it would be illegal or unlawful for John Nixon to exclude or limit liability for.

#### 12. CUSTOMER'S RESPONSIBILITY FOR LOST, NON-RETURNED, DAMAGED OR UNCLEAN JOHN NIXON PLANT

- a) For the avoidance of doubt it is hereby declared and agreed that nothing in this clause affects the operation of clauses 3, 4, 7 and 11 of these Hire Conditions.
- b) During the hire period the Customer shall (subject to the provisions referred to in sub paragraph (a)) make good to John Nixon all loss of or damage to the John Nixon Plant from whatever cause the same may arise (including, but not limited to, any damage caused to tyres and inner tubes including punctures and breakages to windows and windscreens and any corrosive or erosive damage), fair wear and tear excepted, and except as provided in clause 8, shall also fully and completely indemnify and keep indemnified John Nixon in respect of all claims losses and damages by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the John Nixon Plant during the continuance of the hire period, and in respect of all costs and charges in connection therewith whether arising under statute or common law. In the event of loss of or damage to the John Nixon Plant, hire charges shall be continued until settlement has been effected.
- c) Notwithstanding the above, the Customer shall not be responsible for any Claim, damage, loss or injury due to or arising:
  - (i) prior to delivery of any John Nixon Plant to the Customer's Site (or, where the Customer's Site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving such highway) where the John Nixon Plant is in transit by transport of John Nixon or as otherwise arranged by John Nixon;
  - (ii) after the John Nixon Plant has been removed from the Customer's Site and is in transit on a highway maintainable at the public expense (or where the Customer's Site is not immediately adjacent to a highway maintainable at the public expense after it has joined such highway) to John Nixon by transport of John Nixon or as otherwise arranged by John Nixon; and
  - (iii) where the John Nixon Plant is travelling to or from a Customer's Site on a highway maintainable at the public expense (or, where the Customer's Site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after its joining such highway) under its own power with a driver supplied by John Nixon.
- d) When the John Nixon Plant is lost, stolen, damaged beyond reasonable economic repair or cannot be retrieved by John Nixon, the hire will be deemed to end when the Customer pays to John Nixon John Nixon's invoiced charges for such loss, theft or damage of the John Nixon Plant. Where such John Nixon Plant is two years old or less, charges for such loss, theft or damage of such John Nixon Plant shall be based on brand new replacement values. Where such John Nixon Plant is over two years old, charges for such loss, theft or damage of such John Nixon Plant will be based on current replacement values (as determined by John Nixon acting reasonably) with due allowance for fair wear and tear. The John Nixon Plant deemed by John Nixon to be damaged or returned in an unclean or unsatisfactory condition will be held for 3 (three) days for the Customer to inspect. After the expiration of the third day necessary repairs, servicing or cleaning will be carried out by John Nixon. The Customer agrees to pay to John Nixon, on demand, all costs and expenses incurred by John Nixon in rectifying the condition of the John Nixon Plant returned damaged, or in an unsatisfactory or unclean condition. Hire charges will continue until such rectification is complete and John Nixon's invoiced charges for the rectification have been paid. The Customer is responsible for all costs John Nixon may incur in recovering any lost or stolen John Nixon Plant regardless of whether the John Nixon Plant is fitted with a tracking, or similar, device. Whilst a tracking device is an aid to managing, tracking and locating John Nixon Plant, John Nixon accepts no liability whatsoever for any loss, theft or damage to John Nixon Plant during the hire period.
- e) The Customer shall indemnify and keep John Nixon indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by John Nixon as a result of or in connection with any claim made against John Nixon in respect of any liability, loss, damage, injury, cost or expense sustained by John Nixon's employees or agents or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the John Nixon Plant as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Customer including any breach of the terms of any contract entered into by John Nixon with any third party to the extent the same arises from the act, omission, default or negligence of the Customer.

#### 13. NOTICE OF ACCIDENTS, DAMAGE OR DEFECTS

- a) If the John Nixon Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to John Nixon by telephone and confirmed in writing to John Nixon's at the latest within (3) three working days. In relation to any claim in respect of which the Customer is not bound fully to indemnify John Nixon, no admission, offer, promise of payment or indemnity shall be made by the Customer without John Nixon's prior written consent.
- b) The Customer shall, within 21 (twenty one) days from the Customer becoming aware of any damage to the John Nixon Plant, notify John Nixon of such damage, regardless of whether such damage occurs before, during or after the hire period.
- c) Notwithstanding clause 4 of these Hire Conditions, the Customer shall immediately notify John Nixon if it becomes aware of any defect in or with the John Nixon Plant.

#### 14. RE-HIRING ETC.

The John Nixon Plant or any part thereof shall not be re-hired, sub-let, or lent by the Customer to any third party without the Customer notifying John Nixon in writing in advance.

#### 15. CHANGE OF THE CUSTOMER'S SITE

Except where the John Nixon Plant is a welfare van (in respect of which John Nixon acknowledges and agrees will not be consigned to any Fixed Customer Site and therefore, this clause shall not apply), the John Nixon Plant shall not be moved from the Customer's Site to which it was delivered or consigned without the written permission of John Nixon (which may be given at John Nixon's sole discretion). In any event, the Customer shall ensure the John Nixon Plant will not be used outside of England, Scotland and Wales without John Nixon's prior written consent.

#### 16. RETURN OF THE JOHN NIXON PLANT FOR REPAIRS

If during the hire period John Nixon decides that urgent repairs to the John Nixon Plant are necessary John Nixon may (at its sole discretion) arrange for such repairs to be carried out on the Customer's Site or at any location as John Nixon may determine. In that event John Nixon shall elect to replace the John Nixon Plant with similar John Nixon Plant if available, John Nixon (but without prejudice to any of the provisions of clauses 8 and/or 11) paying all its reasonable transport charges and costs involved. In the event of John Nixon being unable to replace the John Nixon Plant he shall be entitled to terminate the Contract immediately (but without prejudice to any of the provisions of clauses 8 and/or 11) by giving written notice to the Customer. If such termination occurs:

- a) within (3) three months from the commencement of hire, John Nixon (but without prejudice to any of the provisions of Clauses 8 and/or 11) shall pay all its reasonable transport charges and costs involved, or
- b) more than (3) three months from the commencement of hire, John Nixon (but without prejudice to any of the provisions of Clauses 8 and/or 11) shall be liable only for its reasonable cost of reloading and return transport.

#### 17. COMMENCEMENT AND TERMINATION OF HIRING

- a) Subject to clause 14 above, the hire period will commence on the date the John Nixon Plant leaves John Nixon's premises and will (unless otherwise agreed by John Nixon) including but not limited to when John Nixon agrees that, in accordance with Clause 5(g) above, the John Nixon Plant can be off-hired by the Customer at any location other than John Nixon's premises) terminate on the day it is returned to John Nixon's premises. The day of hiring and the day of return will be charged respectively as whole days. 24 (twenty four) hours notice of termination of hire must be given by the Customer to John Nixon in writing and the Customer must obtain a John Nixon off-hire reference number from John Nixon prior to any termination.
- b) John Nixon shall not charge the Customer any hire charges for any period for which a John Nixon off-hire reference number has been obtained; provided that the Customer shall still be responsible for such hire charges for those items if he is unable to provide John Nixon's off-hire reference number to John Nixon for that item of the John Nixon Plant. In the event that any item of the John Nixon Plant which is off-hired, is not made available for collection when John Nixon attends the Customer's Site to collect it, such John Nixon Plant shall be deemed with immediate effect to be placed back on hire, and all hire charges and costs shall be due in accordance with these Hire Conditions. The Customer shall be responsible for the reasonable costs and expenses incurred by John Nixon in seeking to collect such off-hired items.

#### 18. TOOLS AND LEADS

Tools and leads are supplied to the Customer in a reasonably good condition. Tools damaged or used beyond re-sharpening and leads cut or damaged will be charged to the Customer at John Nixon's current list prices (as determined by John Nixon from time to time).

#### 19. PROTECTION OF OWNER'S RIGHTS

- a) Subject to clause 14 above, the Customer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the John Nixon Plant and shall protect the same against distress, execution or seizure, free from legal process or lien, fully protected and secure and shall indemnify and keep indemnified John Nixon against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition.
- b) If the Customer make default in punctual payment of any sum due to John Nixon for hire of the John Nixon Plant or other charges or shall fail to observe and perform the terms and conditions of this Contract, or if the Customer shall suffer any distress or execution to be levied against him or make or propose to make any arrangement with his creditors or becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force; or shall do or cause to be done or permit or suffer any act or thing whereby John Nixon's rights in the John Nixon Plant may be prejudiced or put into jeopardy, this Contract may be terminated immediately by notice from John Nixon to the Customer (notwithstanding that John Nixon may have waived some previous default or matter of the same or a like nature).
- c) The Contract shall thereupon be deemed terminated by reason of the Customer's breach and it shall be lawful for John Nixon to promptly retake possession of the John Nixon Plant and for that purpose enter into or upon any premises where the same may be and the determination of the hiring under this clause 19 shall not affect the right of John Nixon to recover from the Customer any monies due to John Nixon under the Contract or any of John Nixon's rights and remedies. In particular, without limitation, John Nixon shall be entitled to claim the hire charges outstanding as at the date of termination of the hire under this clause, return transport charges, and damages for the Customer's actual or deemed breach of the Contract under this Clause.
- d) If applicable, the Customer shall not remove, deface or cover up John Nixon's name plate, John Nixon Plant number or any other mark on the John Nixon Plant indicating that it is John Nixon's property.

#### 20. MAXIMUM PERIOD OF HIRE FOR UNINCORPORATED BODIES

In accordance with the Consumer Credit Act 1974, if the Customer is a partnership, sole trader or other unincorporated body, then the contract of hire will not be more than 3 (three) consecutive calendar months and the Customer shall return the John Nixon Plant to John Nixon on or before the last day of the aforementioned three calendar month period.

#### 21. ELECTRICAL EQUIPMENT

Where the John Nixon Plant comprises electrical equipment (in part or in whole) the same should only be used with plugs and/or sockets as fitted but if temporarily replaced with other suitable plugs or sockets it shall be the Customer's responsibility to ensure that this is carried out by a qualified electrician, who must also reinstate the John Nixon Plant to original condition on the expiry of the hire period. Under no circumstances should electrical John Nixon Plant be used without it being correctly earthed unless it is of double insulated construction. Such electrical equipment must be connected by a qualified electrician to an adequate electrical supply of the correct voltage. In addition, the Customer shall, during the hire period, be solely responsible for ensuring that, where applicable, any digital tachograph affixed to the John Nixon Plant is maintained in good working order and that any data recorded by such digital tachograph is kept safe and secure throughout the hire period.

#### 22. DETERMINATION OF HIRE

John Nixon shall be entitled at any time and for any reason whatsoever, without explanation, to terminate the Contract (such termination to be effective immediately) and to repossess the John Nixon Plant or any part thereof. John Nixon shall be entitled to enter upon the Customer's Site for the purpose of repossessing the John Nixon Plant and the Customer shall pay the cost of recovering and collecting the John Nixon Plant.

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### JOHN NIXON LTD – STANDARD CONDITIONS OF HIRE TO A CUSTOMER

#### 23. PAYMENT TERMS

Unless:

- a) a credit facility has been granted by John Nixon to the Customer (whereby the specific payment terms will be agreed separately between John Nixon and the Customer); or (b) John Nixon has agreed different payment terms with the Customer, all hire charges are payable in advance (such payment may be required by wire transfer, where applicable, or credit card) of collection of the John Nixon Plant or delivery of the John Nixon Plant to the Customer's Site and all other charges (including, but not limited to, any mileage charges payable by the Customer in respect of any John Nixon Plant) are due and payable immediately upon issue of invoice. Where payment is required in advance by credit card, John Nixon may require the Customer to pre-authorise their credit card, which may include the relevant payment(s) being charged to the Customer at the time of the pre-authorisation. All additional fees, including but not limited to (i) credit card charges, (ii) administration fees and (iii) bank surcharges incurred by John Nixon when taking or processing the Customer's payment(s) shall be due and payable by the Customer immediately on issue of invoice. John Nixon shall be entitled to charge the Customer interest in relation to any late payment at the rate of 8% above HSBC Bank Plc base rate until payment in full is made. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay interest together with the overdue amount.
- b) The Customer shall pay all sums due to John Nixon under this Contract without any set-off, deduction, counter claim and/or any other withholding of monies. Prompt payment of John Nixon's invoices shall be of the essence and John Nixon may terminate the hire in the event that the Customer fails to comply with John Nixon's payment terms. Payment shall not be deemed to be made until John Nixon have received either cash or cleared funds in respect of the full amount outstanding.

#### 24. RESPONSIBILITIES OF PERSON SIGNING

The person signing the Contract warrants and represents that he has authority of the Customer to make this contract on the Customer's behalf. The said person hereby indemnifies and shall keep indemnified John Nixon against all losses and costs that may be incurred by John Nixon if this is not so. The said person and the Customer jointly and severally hereby undertake to ensure that no one uses the John Nixon Plant who is not properly instructed in the operation of the John Nixon Plant (which shall be the Customer's responsibility) and shall not allow the John Nixon Plant to be misused.

#### 25. HIRE CHARGE CALCULATION

All equipment has minimum hire periods. Where in the case of hiring by the day, where the Nixon Hire Plant is used for more than 8 (eight) hours a day or where in the case of hiring by the week or more, the Nixon Hire Plant is used for more than 40 (forty) hours a week, the Customer shall pay to Nixon Hire an extra hiring charge proportionate to the extra hours for which the Nixon Hire Plant was used.

Hire charges for a minimum weekly hire period are calculated on a percentage of the weekly hire rate. Day 1 is charged at 60% of the weekly hire rate, Day 2 is charged at 80% of the weekly hire rate, Day 3 up to Day 7 is charged at the full weekly hire rate (100%).

After the initial minimum hire period, all equipment is charged at 20% of the equivalent weekly hire rate for each days hire thereafter.

Nixon Hire's standard minimum period of hire for each product will be available upon request or provided in a quotation or price proposal document or as otherwise agreed by Nixon Hire. Site Welfare products can be hired at rates which include 'unlimited hours'.

Equipment can be hired on Contract Hire: Contract Hire is a minimum term agreement between Nixon Hire and our customers for the provision of equipment at a fixed monthly cost.

#### 26. ADVICE

If advice or information is sought from and given by any representative of John Nixon, the Customer understands and accepts that John Nixon shall not be liable to the Customer for such advice or information and that such advice or information is given in good faith and does not relieve or reduce the Customer's requirement to make his own independent assessment as outlined above.

#### 27. HOLIDAY PERIODS

It is the responsibility of the Customer to ensure the safekeeping of all the John Nixon Plant hired which is not returned to John Nixon before the start of any holiday period. For the purpose of these terms, "holiday period" shall mean any bank or public holidays. The John Nixon Plant will be deemed to be in use during the holiday period and will be charged in accordance with the terms of the Contract. The John Nixon Plant is deemed to be on-hire during holiday periods and the Customer is responsible for its safekeeping.

#### 28. SUSPENSIONS

All requests for the suspension of hire charges must be made seven days in advance to John Nixon in writing. John Nixon will confirm their agreement or otherwise in writing. No suspension allowance will be made unless confirmed in writing by John Nixon. Unless otherwise agreed in writing by John Nixon, the John Nixon Plant is deemed to be on-hire during weekends, holiday periods and the Customer is responsible for its safekeeping. Alternatively, John Nixon may agree to charge an agreed weekly surcharge for an all-inclusive rate but this must be confirmed in writing by John Nixon prior to the commencement of the hire period.

#### 29. AVAILABILITY

The John Nixon Plant is offered for hire subject to availability at the time of the Customer's order. John Nixon will not be liable for any loss as a result of the John Nixon Plant being unavailable for hire.

#### 30. INSURANCE, TITLE AND RISK

- a) The Customer shall take out and maintain insurance against any and all liabilities the Customer might incur under the Contract, including but not limited to insuring the John Nixon Plant at full market value, with a reputable insurance company. The Customer shall be solely responsible for notifying its insurers in relation to the type of the John Nixon Plant being hired from John Nixon (including, but not limited to, details regarding the size and type of any vehicle(s) being hired). The Customer will, on request by John Nixon, at any time produce to John Nixon evidence of the insurance policies covering the John Nixon Plant. If the Customer fails to keep the John Nixon Plant insured to the satisfaction of John Nixon or fails to produce evidence of insurance, John Nixon may, at the expense of the Customer, insure the John Nixon Plant and the Customer will pay to John Nixon on demand any sums expended by John Nixon for such purpose with interest payable in addition at a rate of 8% above HSBC Bank Plc base rate from the time of John Nixon having taken out such insurance until the date of repayment of such sums by the Customer.
- b) The John Nixon Plant shall at all times remain the property of John Nixon, and the Customer shall have no right, title or interest in or to the John Nixon Plant (save the right to possession and use of the John Nixon Plant during the hire period subject to these Hire Conditions).
- c) Risk of damage to or loss or theft of the John Nixon Plant shall pass to the Customer on loading the John Nixon Plant on to the delivery vehicle at John Nixon's premises for delivery to the Customer and shall remain with the Customer for the duration of the hire period and any further term during which the John Nixon Plant is in the possession, custody or control of the Customer. Risk shall pass back to John Nixon on unloading of the John Nixon Plant from the delivery vehicle at John Nixon's premises. Notwithstanding delivery and the passing of risk or any other provisions of the Contract, the Customer shall not acquire any right in or property to the John Nixon Plant.
- d) The Customer shall, during the hire period, be responsible for the safety of all personal property, items and goods left in any John Nixon Plant by the Customer, its employees, subcontractors and agents and the Customer shall indemnify and keep indemnified John Nixon in respect of all claims for the loss or theft of such personal property, items and goods.

#### 31. FUEL AND VEHICLE CARE

- a) All mechanical John Nixon Plant is supplied with fuel, which shall be measured and recorded by John Nixon at commencement of the hire period (Measured Amount). Upon expiry of the hire period, or earlier termination under these Hire Conditions, the Customer will top up and fill the tank of fuel to the Measured Amount and any difference will be charged at John Nixon's prevailing rate per litre. The Customer shall be responsible for ensuring the correct fuel is used for the John Nixon Plant and indemnifies and keeps indemnified John Nixon against all loss, damage, cost and expense suffered or incurred as a result of using the incorrect fuel.
- b) In respect of all vehicles, the Customer shall, during the hire period, check on a daily basis the engine oil level, radiator water level, washers and wipers, lights, wheel nuts brake fluid level and if applicable, the tow-bar.
- c) The Customer shall, during the hire period, ensure that, without John Nixon's prior written consent, vehicles are not used:
  - (i) for the carriage of passengers for remuneration or payment of any kind;
  - (ii) to propel or tow any other vehicle or trailer; or
  - (iii) by any person not withholding a valid UK driving licence for the class of vehicle being operated or driven.

#### 32. INVOICE QUERIES

All invoice queries must be notified in writing to head office within 21 (twenty one) days of invoice date.

#### 33. HIRE CHARGE ALTERATIONS

John Nixon shall be entitled to revise or increase the hire rate for any item of the John Nixon Plant by giving 7 (seven) days written notice to the Customer's address as detailed in the Contract.

#### 34. VAT

All prices shown on delivery or advice notes exclude VAT.

#### 35. HEADINGS

The headings used in these Hire Conditions are for convenience only and shall not affect the construction thereof.

#### 36. SEPARATE TERM VALIDITY

In the event that any clause (or part thereof) of these Hire Conditions is held to be unlawful, unenforceable or invalid by any court or other competent body, this shall not in any way affect the validity of the remainder of such clause and the remainder of the other clauses in these Hire Conditions.

#### 37. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Contract 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.

#### 38. THIRD PARTY RIGHTS

No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of these Hire Conditions.

#### 39. VARIATION

No variation of these Hire Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### 40. NOTICES

- a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business or residential address (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one working day after transmission.
- c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 41. ASSIGNMENT

- a) John Nixon may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of John Nixon.

#### 42. GOVERNING LAW AND JURISDICTION

- a) The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England.
- b) The parties irrevocably agree that, subject as provided below, the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter. Nothing in this clause shall limit the right of John Nixon to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

## SECTION 3

### JOHN NIXON LTD – STANDARD CONDITIONS OF SALE TO A CUSTOMER

#### 1. Nixon Hire's Conditions Apply

- 1.1 Unless otherwise specifically agreed in writing by John Nixon, all quotations and contracts for the supply of goods by John Nixon are made upon these Sale Conditions which shall at all times override any terms and conditions which the Customer imposes or seeks to impose.
- 1.2 Delivery of any goods following a quotation for supply made by John Nixon will be made only upon the Sale Conditions. Orders are accepted subject to the Sale Conditions.
- 1.3 Any variation must be approved by an authorised John Nixon employee and be in writing. Any quotation or estimate is given subject to the Sale Conditions.
- 1.4 For the purposes of these Sale Conditions, the "Contract" means any contract made between the parties that incorporates the Sale Conditions.

#### 2. Basis of Contract

- 2.1 An order constitutes an offer by the Purchaser to purchase goods and/or services in accordance with these Sale Conditions.
- 2.2 The order shall only be deemed to be accepted when John Nixon issues a confirmation of order (including by email or telephone) of the order, at which point and on which date a contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of John Nixon which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter, online publications, or advertising issued by John Nixon and any description of the goods or illustration or descriptions of the services contained in John Nixon's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the services and/or goods described in them. They shall not form part of the Contract or have any contractual force or effect.
- 2.5 All of these Sale Conditions shall apply to the supply of both goods and services except where application to one or the other is specified.
- 2.6 Where the Customer is a consumer, these Sale Conditions do not affect any of the Customer's statutory rights as a consumer.

#### 3. Payment Terms

- 3.1 Unless otherwise agreed by John Nixon or detailed in the confirmation of order, payment shall be due on or before delivery of the goods in accordance with condition 6 below and in default John Nixon shall be entitled, without notice to the Customer (even if the Customer has a contract with a third party), to:
- 3.1.1 terminate any outstanding order or quotation;
- 3.1.2 withhold and/or suspend supplies of any goods or services;
- 3.1.3 reduce the Customer's credit limit;
- 3.1.4 claim damages for any loss or cost incurred by John Nixon; or
- 3.1.5 cancel the Contract.
- 3.2 John Nixon shall also be entitled, at its discretion, to receive payment of any and all monies in respect of goods supplied whether these monies would ordinarily be due for payment at that time or not. Time of payment is of the essence.
- 3.3 In addition, John Nixon shall be entitled to charge the Customer interest on the amount unpaid at the rate of 8% above HSBC Bank Plc base rate until payment in full is made. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay interest together with the overdue amount. The Customer will indemnify and keep indemnified John Nixon in respect of all costs incurred by John Nixon in recovering payment, including the cost of instructing solicitors.
- 3.4 No payment shall be deemed to have been received until John Nixon has received cleared funds.
- 3.5 In the event that the Customer tenders payment by cheque and the cheque is subsequently returned by the Customer's Bankers unpaid, the Customer will also indemnify and keep indemnified John Nixon in respect of all resulting bank charges incurred by John Nixon.
- 3.6 The Customer shall make all payments due under the Contract without any deduction whether by way of setoff, counterclaim, discount, abatement or otherwise unless and until the Customer has an actual valid court order requiring an amount equal to such deduction to be paid by John Nixon to the Customer.
- 3.7 John Nixon reserves the right to set off, deduct or discount any amounts due from John Nixon under any other arrangement with the Customer against any monies due to John Nixon under this Contract.

#### 4. Prices

- 4.1 All prices displayed in both our printed and online publications are subject to VAT where applicable.
- 4.2 Prices are correct at time of issue and are subject to change by John Nixon without prior notice to the Customer.
- 4.3 The price charged to the Customer will be the prevailing price at the time of ordering.

#### 5. Retention of Title

- 5.1 Although risk in the goods supplied passes to the Customer on delivery, legal title in such goods shall not pass to the Customer until John Nixon has received in cleared funds the full price payable for such goods and all other goods supplied by John Nixon to the Customer for which payment is then due.
- 5.2 Until legal title passes, the Customer shall hold the goods as John Nixon's fiduciary agent and bailee and shall keep them properly protected, insured and stored separately from any other goods (whether or not supplied by John Nixon). In addition, the Customer shall not remove, deface or obscure any identifying mark or packaging on or relating to the goods. Until that time the Customer is entitled to resell or use the goods in the ordinary course of its business but shall account to John Nixon for the proceeds of sale and pending payment shall hold such proceeds on trust for John Nixon absolutely. If the Customer resells the goods before title has passed under these Sale Conditions, it does so as principal and not as John Nixon's agent, and title to the goods shall pass from John Nixon to the Customer immediately before the time at which resale by the Customer occurs.
- 5.3 The Customer's right to resell or use the goods shall terminate automatically on the occurrence of any event set out in condition 13 and/or if any sum owed to John Nixon by the Customer is not paid when due.
- 5.4 Until such time as legal title in the goods passes to the Customer John Nixon may at any time require the Customer, its liquidator, receiver or administrator to return the goods and/or may repossess the goods by entering upon any premises of the Customer or any third party where the goods are reasonably believed to be stored.
- 5.5 In addition and without prejudice to any other right or remedy available to John Nixon, if the Customer is in breach of the payment terms or of any of its obligations under this condition, John Nixon shall be entitled to:
- 5.5.1 cancel the Contract;
- 5.5.2 suspend further deliveries; or
- 5.5.3 terminate any outstanding order or quotation without incurring any liability whatsoever as a consequence of this action.

- 5.6 John Nixon reserves the right at any time before title in the goods has passed to the Customer to require the Customer to deliver up the goods if any of the events specified in condition 13 occurs.

#### 6. Delivery

- 6.1 Terms and conditions for delivery are only applicable in the UK.
- 6.2 Unless otherwise agreed delivery of the goods shall take place at the Customer's place of business. Where John Nixon makes delivery of the goods to the Customer's place of business or any other place as agreed in writing, all charges in relation to carriage, including, without limitation transport costs, insurance and unloading, will at John Nixon's option, be borne and payable (on demand) by the Customer. The Customer shall provide or ensure that access to and over the Customer's place of business is in every respect suitable for the vehicle used for delivering the goods. In particular, if the ground (including any private access road or track) is soft or unsuitable for the goods to work on, travel, or be transported over without timbers or equivalents the Customer shall supply and lay suitable timbers or equivalents in a suitable

position for the goods to travel over, work on, or be transported over, including for the purpose of delivery.

- 6.3 If for any reason the Customer does not accept delivery of any of the goods when they are ready for delivery or John Nixon or its contractor is unable to deliver the goods then the goods will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by John Nixon's negligence) and John Nixon may:

- 6.3.1 store the goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance); or
- 6.3.2 sell the goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Customer for any shortfall below the Contract price.

- 6.4 John Nixon reserves the right to deliver in installments and any failure to deliver one installment will not entitle the Customer to terminate the Contract.

- 6.5 The quantity of any consignment of goods as recorded by John Nixon upon despatch from John Nixon's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

- 6.6 Claims for shortages or damaged goods must be made in writing to John Nixon within 3 (three) days of receipt of the goods.

- 6.7 Claims for non delivery must be made to John Nixon within 10 (ten) days of date of despatch shown on invoice.

#### 7. Returns

- 7.1 Notwithstanding any other provision in the Contract, John Nixon may at its sole option and discretion allow the Customer to return the goods (except for small tools, which are non-returnable) upon the following conditions:

- 7.1.1 in relation to brand new goods, that the relevant goods are non-faulty and, in relation to second-hand goods, that the relevant goods are materially faulty;
- 7.1.2 that the relevant goods are goods that are ordinarily held in stock at one of John Nixon's locations;
- 7.1.3 that the Customer notifies John Nixon within 10 (ten) days of delivery of its intention to return the goods;
- 7.1.4 that the goods are returned to John Nixon within 15 (fifteen) days of delivery;
- 7.1.5 John Nixon and the Customer shall agree whether the goods shall be delivered by the Customer to John Nixon or collected by John Nixon from the Customer;
- 7.1.6 that the goods are undamaged, in the original packaging, with all trademarks or other labeling intact and fully suitable for re-sale;
- 7.1.7 the Customer agrees to pay John Nixon a 15% (fifteen per cent) handling fee against the return of non-faulty standard goods.

- 7.2 Notwithstanding any other provision in the Contract, John Nixon may from time to time at its sole option accept the return of non standard, non faulty goods on separate rates, terms and conditions, to be agreed with the Customer in advance of any such return. Non standard goods are goods which are not ordinarily held in stock at one of John Nixon's locations.

- 7.3 Notwithstanding any other provision in the Contract, John Nixon may, at its sole discretion, agree to buy back goods previously supplied to the Customer at the amount agreed between the Parties at the time but shall be under no obligation to do so.

#### 8. Quality

- 8.1 If John Nixon establishes to its reasonable satisfaction that there is a material defect in the goods or there is some other material failure by John Nixon in relation to the conformity of the goods with the Contract, then John Nixon shall at its sole discretion and within a reasonable time:

- 8.1.1 replace such goods with goods which are in all respects in accordance with the Contract; or
- 8.1.2 repair such goods to ensure that, once repaired, the goods conform with the Contract; or
- 8.1.3 issue a credit note to the Customer in respect of the whole or part of the Contract price of such goods as appropriate having taken back such goods, subject, in every case, to the remaining provisions of this Condition provided that the liability of John Nixon under this Condition shall in no event exceed the purchase price of such goods and performance of any one of the above options shall constitute an entire discharge of John Nixon's liability under this warranty.

- 8.2 This Condition shall not apply unless the Customer:

- 8.2.1 notifies John Nixon of the alleged defect within 3 (three) days of the time when the Customer discovers or ought to have discovered the defect;
- 8.2.2 allows John Nixon to collect the relevant goods;
- 8.2.3 complies with any reasonable request or instruction from John Nixon; and
- 8.2.4 affords John Nixon a reasonable opportunity to inspect the relevant goods.

- 8.3 If John Nixon elects to replace the goods pursuant to this Condition, John Nixon shall deliver the replacement goods to the Customer at John Nixon's own expense at the address to which the defective goods were delivered and the legal title to the defective goods which are being replaced shall (if it has vested in the Customer) vest in John Nixon.

- 8.4 John Nixon shall be under no liability under this Condition:

- 8.4.1 in respect of any defect arising from willful damage, negligence, abnormal storage conditions, failure to follow John Nixon's or the manufacturer's instructions whichever is appropriate (whether oral or in writing);
- 8.4.2 the Customer alters or repairs the goods without John Nixon's written consent;
- 8.4.3 if the total price for the goods has not been paid by the due date for payment;
- 8.4.4 in respect of any type of defect or damage specifically excluded by John Nixon by notice in writing; or
- 8.4.5 if the Customer makes any further use of the goods after giving notice in accordance with this Condition.

- 8.5 Subject to Condition 8.6 below, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

- 8.6 Notwithstanding Condition 8.5 above, John Nixon warrants that, on delivery, the goods shall:

- 8.6.1 conform in all material respect with their description; and
- 8.6.2 be free from material defects in design, material and workmanship but shall otherwise be sold as seen, which the Customer accepts.

- 8.7 Where the goods supplied by John Nixon under a Contract with the Customer are sold with a manufacturer's guarantee and/or any warranty only, John Nixon shall (provided that it is legally able to do so) ensure that such manufacturer's guarantee and/or warranty is transferred to the Customer at the same time as title in the goods transfers to the Customer in accordance with Condition 4 above.

#### 9. Liability

- 9.1 Subject to Condition 8 above this Condition sets out the entire liability of John Nixon (including any liability for the acts or omissions of its employees, agents and sub contractors) to the Customer in respect of:

- 9.1.1 any breach of the Sale Conditions or the Contract;
- 9.1.2 any use made or resale by the Customer of any product incorporating any of the goods; and
- 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 9.2 Nothing in the Sale Conditions excludes or limits the liability of John Nixon for death or personal injury caused by John Nixon's negligence, or for fraudulent misrepresentation or for any matter which it would be illegal for John Nixon to exclude or attempt to exclude its liability.

- 9.3 Liability for any direct loss or damage which arises out of or in connection with the Contract whether in contract, tort (including negligence) breach of statutory duty or otherwise shall in no circumstances exceed the price of the Goods and shall be limited to the Contract value.

- 9.4 John Nixon shall not be liable to the Customer for any indirect loss of profit, loss of business or depletion of goodwill or consequential loss or any claims for consequential compensation whatsoever which arise out of or in connection with the Contract.

## SECTION 3

### JOHN NIXON LTD – STANDARD CONDITIONS OF SALE TO A CUSTOMER

#### 10. Services

Any services which are subject to a separate fee and are to be performed by John Nixon under the Contract are performed in accordance with John Nixon's terms and conditions of service. A copy of the terms and conditions of services are available upon request.

#### 11. Safety and Product Recalls

- 111 The Customer shall comply at all times with the written instructions and all written guidelines issued from time to time attached to the goods concerning their storage and use and the Customer shall refer its employees and its customers to such instructions and guidelines.
- 112 The Customer should satisfy itself that the persons responsible for the storage and use of any goods supplied by John Nixon have all the information required on health and safety and John Nixon shall not be liable to the Customer in any civil proceedings brought by the Customer against John Nixon in respect of a breach of the user instructions or any applicable health and safety legislation or any regulations, orders or directions made pursuant to such health and safety legislation in force from time to time or under any directive, regulation, order or other instrument relating to health and safety where such exclusion of liability is permitted by law.
- 113 The Customer shall keep John Nixon properly informed of all complaints concerning the goods and shall comply with any directions of John Nixon in any issues, proceedings or negotiations relating to such complaint. In the event of any recall of the goods by John Nixon the Customer shall co-operate fully and promptly with any steps taken by John Nixon under the Condition below.
- 114 John Nixon may at its discretion recall any goods already sold by John Nixon to the Customer, (whether for a refund or credit or for replacement of the goods which shall in each case be undertaken by John Nixon) and/or issue any written or other notification to the Customer about the manner of use of any goods already sold by John Nixon to the Customer. The Customer agrees to give all reasonable assistance to John Nixon or the manufacturer in resisting any claim which may arise under any recall of product by John Nixon or the manufacturer of such product.

#### 12. Force Majeure

John Nixon reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of John Nixon including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 180 (one hundred and eighty) days, the Customer shall be entitled to give notice in writing to John Nixon to terminate the Contract.

#### 13. Termination

- 131 John Nixon may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or cancel delivery of the goods or stop any goods in transit or by notice in writing to the Customer terminate the Contract without liability to John Nixon if:
- 13.1.1 the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
- 13.1.2 the Customer fails to remedy a breach of its obligations under the Contract which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by John Nixon to remedy or desist from such breach within a period of 14 (fourteen) days;
- 13.1.3 any distress execution or diligence is levied upon any of the Customer's goods or property and is not paid out within 7 (seven) days of it being levied;
- 13.1.4 the Customer (being a partnership) or the Customer's partner offers to make any arrangements with or for the benefit of the creditors of the Customer or the Customer's partner generally or there is presented in relation to the Customer or the Customer's partner a petition of bankruptcy;
- 13.1.5 the Customer (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer calls a meeting for the purpose of passing a resolution to wind up its company or such a resolution is passed or the Customer presents or has presented a petition to wind up or present or have presented a petition or appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of the Customer's business, undertaking, property or assets;
- 13.1.6 the Customer ceases, or threatens to cease, to carry on business;
- 13.1.7 a secured lender to the Customer takes any steps to obtain possession of the property on which it has security or otherwise to enforce its security.
- 132 Notwithstanding any such termination or suspension in accordance with the above the Customer shall pay John Nixon at the Contract rate all payments subsisting at the time of termination.

#### 14. Product Information

- 141 Whilst John Nixon has made every effort to ensure that details and information given in both its printed and online publications are accurate at the time of issue but John Nixon gives no guarantees as to the accuracy or completeness of such information. Full technical specifications are not necessarily included and furthermore, John Nixon's policy is one of continuous improvement and the right is reserved to alter details and information at any time as the need arises.
- 142 Accordingly, the Customer should check any details and information they wish to rely on with John Nixon at the time of purchase. John Nixon accepts no liability in respect of any errors or omissions herein contained or for any loss or damage, malfunction or consequential loss arising from reliance upon our publications.

#### 15. John Nixon Disclaimer

Any products shown in both our printed or online publications do not represent endorsement by John Nixon of any other products, services or organisations.

#### 16. Colour Reproduction

The colour reproductions of the garments featured in both our printed or online publications are as accurate as the printing or electronic process will allow.

#### 17. Data Protection

- 171 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17.1 is in addition to, and does not relieve, remove or replace, a parties obligations under the Data Protection Legislation.
- 172 John Nixon monitors and records all telephone calls for the following purposes:
- 17.2.1 training;
- 17.2.2 quality and control; and
- 17.2.3 to confirm verbal instructions.

- 173 John Nixon has and maintains privacy policies in respect of its website and its business activities generally.

#### 18. Assignment

- 181 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of John Nixon.
- 182 John Nixon may assign the Contract or any part of it to any person, firm or company at any time and without having to obtain the Customer's prior consent.

#### 19. General

- 191 Each right or remedy of John Nixon under the Contract is without prejudice to any other right or remedy of John Nixon whether under the Contract or not.
- 192 Each party agrees to keep secret and confidential all information obtained or disclosed as a result of the relationship of the parties under the Contract.
- 193 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or

unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 194 Failure or delay by John Nixon in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

- 195 Any waiver by John Nixon of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

- 196 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

- 197 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

#### 20. All Rights Reserved

- 201 No part of any John Nixon publication may be reproduced or transmitted in any form or by any means including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher.

- 202 Such written permission must be obtained before any part of this publication is stored in a retrieval system of any nature.

- 203 Where applicable, all prices are subject to VAT. All prices are subject to alteration without notice. We reserve the right to amend the Sale Conditions which are subject to confirmation at the time of application.

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