

# **BLACKBURN TOOL HIRE NORTH** **WEST LTD (BTHNW)**

## **STANDARD TERMS & CONDITIONS** **SUPPLY OF HIRE EQUIPMENT**

**PLEASE NOTE THAT THESE TERMS ARE USED WITH TRADERS AND WITH CONSUMERS AND IN CERTAIN AREAS DIFFERENT PROVISIONS APPLY TO EACH AS FOLLOWS: .**

- **Part A:** General Terms applying to Traders and Consumers;
- **Part B:** Terms applying only to Consumers; and
- **Part C:** Terms applying only to Traders.

A **"Trader"** means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.

A **"Consumer"** means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession. Before placing an order, the Hirer should read these Terms carefully as they contain important information about BTHNW LTD and the Contract.

**WHERE THE HIRER IS A CONSUMER, THE HIRER'S ATTENTION IS DRAWN IN PARTICULAR TO THE SECTIONS CONCERNING BTHNW LTD' LIABILITY TO THE HIRER AND CANCELLATION SET OUT IN PART B.**

### **PART A: GENERAL TERMS APPLYING TO TRADERS AND CONSUMERS**

#### **1. DEFINITIONS**

1.1 In these Terms: BTHNW LTD

**"BTHNW LTD"** means Blackburn Tool Hire North West LTD

the following words and expressions shall, unless the context or circumstances require otherwise, have the meanings assigned to them below:

**"BTHNW LTD"** means Blackburn Tool Hire North West LTD

**"Additional Charges"** means charges applicable to the provision of the Equipment which are charged in addition to the Charges including those additional costs and expenses referred to in these Terms;

**"Charges"** means the charges set out in the Contract or if no charges are detailed in the Contract, BTHNW LTD standard charges for the relevant Equipment in force on the date BTHNW LTD issues a written acceptance of the Order to the Hirer;

**"Commencement Date"** means the date on which the relevant Contract is formed in accordance with clause 3.2;

**“Contract”** means the contract between BTHNW LTD and the Hirer formed in accordance with clause 3.2;

**“Damage Waiver”** means the optional waiver of liability for payment by the Hirer for damage to Equipment as set out in clause 7;

**“Damage Waiver Plus”** means the optional waiver of liability for payment by the Hirer for loss or damage to Equipment as set out in clause 7;

**“Equipment”** means the items of equipment to be hired by the Hirer as listed in the Order, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for the equipment;

**“Hire Period”** means the period of hire of the Equipment as set out in the Contract, unless the Contract is terminated earlier in accordance with these Terms or extended by agreement between BTHNW LTD and the Hirer;

**“Hirer”** means the Consumer or Trader set out as such in the Contract; BTHNW LTD means the relevant BTHNW LTD company set out in the Contract;

**“Order”** means the individual orders for the hire of Equipment placed by the Hirer from time to time in a branch, over the telephone, via our website or in accordance with these Terms;

**“Replacement Cost”** means the cost of replacing with new any item of Equipment or part of it including but not limited to the cost of the item or part of it, any unpaid Charges that would otherwise have been paid by the Hirer were it not for such replacement, and a reasonable administrative charge to be determined by BTHNW LTD covering the cost to BTHNW LTD of administering the replacement;

**“Site”** means any premises or location at which the Equipment is to be delivered to or collected from or is otherwise located;

**“Terms”** means these terms and conditions.

1.2 references to the singular include the plural and vice versa and references to any gender include every gender;

1.3 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organization, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

1.4 in the event that there is a conflict between Part A, Part B and Part C, Part A shall prevail and then Part B in the case of a Consumer and Part C in the case of a Trader; and

1.5 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

## 2. INFORMATION ABOUT BTHNW LTD AND CONTACTING BTHNW LTD

2.1 **Who is BTHNW LTD.** The name, company registration number, registered office address of the relevant BTHNW LTD company from which the Equipment will be hired is set out in the Contract.

2.2 **How to contact BTHNW LTD.** If the Hirer has any questions or if the Hirer has any complaints, the Hirer should contact BTHNW LTD. BTHNW LTD can be contacted by calling 07707741699, e-mailing the branch, or by post at BTHNW LTD Hire, 72/80 Bolton Road, Blackburn, BB2 3PZ.

2.3 **How BTHNW LTD may contact the Hirer.** If BTHNW LTD has to contact the Hirer, BTHNW LTD will do so by telephone or by writing to the Hirer at the email address or postal address the Hirer provides to BTHNW LTD in the Order.

## 3. FORMATION OF CONTRACT AND ORDERS

3.1 **The Hirer's Order is an offer to hire from BTHNW LTD.** Each Order placed by the Hirer will be an offer by the Hirer to hire the Equipment on these Terms. The Hirer will ensure that each Order is accurate and complete, and that the Equipment is suitable for the Hirer's requirements.

3.2 **How we, BTHNW LTD, accept the Order.** A Contract will be formed between BTHNW LTD and the Hirer for the provision of the Equipment set out in the Order, when BTHNW LTD issues a written acceptance (including by email) of the Order to the Hirer.

3.3 **BTHNW LTD may not accept your Order.** If BTHNW LTD is unable to accept an Order for any reason, BTHNW LTD will inform the Hirer of this and will not charge for the Equipment.

3.4 **When will the Contract commence.** The Contract shall commence on the Commencement Date and shall continue for the Hire Period unless terminated earlier in accordance with these Terms.

3.5 **BTHNW LTD hires Equipment in the UK only.** BTHNW LTD 'website is solely for the promotion of BTHNW LTD 'equipment in the UK.

## 4. THE EQUIPMENT

4.1 **BTHNW LTD retains ownership of the Equipment.** The Hirer acknowledges that the Equipment remains at all times the property of BTHNW LTD (or its supplier as applicable). The Hirer has no right, title or interest in the Equipment except that it is hired to the Hirer in accordance with the terms of the Contract.

4.2 **The Hirer will have quiet possession of the Equipment.** BTHNW LTD shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Hirer's quiet possession of the Equipment during any Hire Period.

4.3 **Hirer to notify BTHNW LTD of issues with or caused by the Equipment.** The Hirer shall immediately notify BTHNW LTD of any loss, accident, damage, or defect in the Equipment or if the Hirer considers that the Equipment may cause damage to the Hirer's property.

4.4 **BTHNW LTD may access a Site to inspect and repair the Equipment.** The Hirer shall grant (or shall procure that BTHNW LTD or its authorized representative is granted) access to the Site at all such reasonable times on BTHNW LTD giving the Hirer

reasonable notice to inspect the Equipment and ensure the Hirer's compliance with its obligations under the Contract; and/or carry out any inspections or repairs of the Equipment.

**4.5 The Hirer will replace any fuel in the Equipment.** Where the Equipment is supplied with fuel, the Hirer shall return the Equipment with the same or a greater amount of fuel. BTHNW LTD shall be entitled to charge the Hirer for any refueling costs if the Hirer fails to comply with this clause 4.5, at such rates as may be notified to the Hirer from time to time.

**4.6 Use and storage of the Equipment by Hirer.** The Hirer:

4.6.1 shall keep the Equipment in good repair and condition, (fair wear and tear only excepted) but the Hirer shall not repair or allow any third party to repair the Equipment and shall notify BTHNW LTD immediately if any repair is necessary;

4.6.2 shall where the Equipment requires fuel, oil and/or electricity, ensure that the proper type of fuel, oil and/or voltage is used;

4.6.3 shall not sell, license or create any security interest or type of preferential arrangement on or over the Equipment;

4.6.4 shall use the Equipment in compliance with all laws and applicable regulations including any health and safety legislation which relates to the use of the Equipment and in accordance with any operating and/or safety instructions provided to or supplied to the Hirer by BTHNW LTD;

4.6.5 shall not make any alteration to the Equipment (including defacing or covering up BTHNW LTD 'name plate or mark);

4.6.6 shall not without the prior written consent of BTHNW LTD, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building;

4.6.7 shall not, without the prior written consent of BTHNW LTD, part with control of the Equipment;

4.6.8 shall not do or permit to be done anything which could invalidate BTHNW LTD 'insurances;

4.6.9 is responsible for the security of the Equipment whilst in the Hirer's possession; and

4.6.10 will take all appropriate measures to secure the Equipment at the Site, including when not in use.

**4.7 Damage to or loss of Equipment.** Subject to clause 7, the Hirer shall pay BTHNW LTD:

4.7.1 all costs and expenses in respect of: (i) rectifying any damage to the Equipment (fair wear and tear excepted) which occurred during the period in which the Equipment was at the Hirer's risk; and (ii) cleaning the Equipment following collection of the Equipment, in each case to return the Equipment to a condition fit for rehire. Such costs and expenses shall be confirmed to the Hirer by BTHNW LTD, subject to supporting documentation. In addition, the Hirer will continue to pay the Charges until any repairs and or cleaning have been completed; and

4.7.2 the Replacement Cost in respect of lost or stolen Equipment and/or Equipment which is beyond economic repair and the Hirer will continue to pay the Charges, until the Replacement Cost has been received by BTHNW LTD.

**4.8 Consequences of expiry or cancellation of the Contract.** On expiry or cancellation of the Contract for whatever reason all Equipment at such time in the possession of the Hirer shall immediately become due for return to BTHNW LTD and unless agreed otherwise in writing, the Hirer will return the Equipment to BTHNW LTD.

**4.9 BTHNW LTD requires access to recover or substitute the Equipment.** The Hirer will grant, and will ensure that the owner of any third party premises will grant to BTHNW LTD, its agents, employees and sub-contractors the right at any time to enter any premises where the Equipment is or may be stored in order to recover or substitute the Equipment. The rights granted in this clause 4.9 are without prejudice to any rights and remedies of BTHNW LTD.

**4.10 Substitution of the Equipment.** BTHNW LTD may substitute the Equipment from time to time with an alternative piece of equipment of an equivalent standard. BTHNW LTD will give you reasonable notice if it intends to do this.

## **5. DELIVERY AND COLLECTION**

**5.1 When BTHNW LTD will provide the Equipment.** During the order process BTHNW LTD will let the Hirer know when BTHNW LTD will provide the Equipment.

**5.2 BTHNW LTD is not responsible for delays outside of BTHNW LTD 'control.** If BTHNW LTD 'supply of the Equipment is delayed by an event outside BTHNW LTD 'control (including but not limited to any disruption or delay to BTHNW LTD 'business or supply chains arising as a result of the United Kingdom's exit from the European Union or any form of health epidemic) then BTHNW LTD will contact the Hirer as soon as possible to let the Hirer know and BTHNW LTD will take steps to minimise the effect of the delay. BTHNW LTD will not be liable for delays caused by any event outside BTHNW LTD 'control, but if there is a risk of substantial delay the Hirer may contact BTHNW LTD to end the Contract and receive a refund for any Equipment paid for but not received.

**5.3 If the Hirer does not allow BTHNW LTD access to provide the Equipment.** If the Hirer does not allow or procure BTHNW LTD access to its property to provide the Equipment as arranged BTHNW LTD may charge the Hirer additional costs incurred by BTHNW LTD as a result. If, despite BTHNW LTD 'reasonable efforts, BTHNW LTD is unable to contact the Hirer or re-arrange access to the Hirer's property BTHNW LTD may end the contract. It is the Hirer's responsibility to ensure that the Site has been inspected by the Hirer and that the Site is adequately prepared to allow BTHNW LTD to access it to effect Delivery in a safe manner without causing damage. The Hirer acknowledges that BTHNW LTD may effect deliveries or collections in large, heavy commercial vehicles and will hold BTHNW LTD harmless in the event of any damage caused by lack of Site preparation by the Hirer, to include poor access routes and/or ground conditions. If the Hirer has any concerns around access and safe delivery, this should be raised with BTHNW LTD staff prior to completing an Order and noted on the Order, failing which BTHNW LTD shall have no liability for damage to Site or delayed or failed delivery and the Hirer shall be liable for any related charges, including redelivery charges.

**5.4 When the Hirer becomes responsible for the Equipment.** Delivery will occur when the Equipment is made available to the Hirer at the delivery address (whether at BTHNW LTD 'premises or a Site). Unless otherwise agreed by the parties in writing, risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on delivery in accordance with this clause and will return to BTHNW LTD once loading of the

Equipment onto the collection vehicle is complete. For the avoidance of doubt, where the Hirer contacts BTHNW LTD or otherwise uses the BTHNW LTD app to off-hire the Equipment, risk will always remain with the Hirer until loading onto the collection vehicle is complete.

**5.5 What will happen if the Hirer does not give required information to BTHNW LTD.** BTHNW LTD may need certain information from the Hirer so that BTHNW LTD can supply the Equipment, for example, delivery details. BTHNW LTD will contact the Hirer to ask for this information. If the Hirer does not give BTHNW LTD this information within a reasonable time of BTHNW LTD asking for it, or if the Hirer gives BTHNW LTD incomplete or incorrect information, BTHNW LTD may either end the Contract or make an additional charge of a reasonable sum to compensate BTHNW LTD for any extra work that is required as a result. BTHNW LTD will not be responsible for supplying the Equipment late or not supplying any part of it if this is caused by the Hirer not giving BTHNW LTD the information BTHNW LTD needs within a reasonable time of BTHNW LTD asking for it.

**5.6 If the Hirer does not allow BTHNW LTD access to collect the Equipment.** The Hirer shall grant or procure the grant of access to the Site to BTHNW LTD to allow the collection of the Equipment and make the Equipment available for collection by BTHNW LTD on the date and time agreed between the parties. If BTHNW LTD is unable to collect the Equipment as arranged BTHNW LTD may charge the Hirer any additional costs incurred by BTHNW LTD as a result. The Hirer agrees to allow BTHNW LTD to enter the site unannounced where the equipment of BTHNW LTD is held and reposes all equipment that belong to BTHNW LTD whether on private or public property.

**5.7 Branch collections and returns.** When a Hirer wishes to collect or return Equipment from or to an BTHNW LTD branch or place of business, it shall be the Hirer's responsibility to prepare its vehicle so that the collection/return can be carried out without damage being caused to such vehicle or injuries being sustained by the Hirer or by BTHNW LTD staff and the Hirer shall hold BTHNW LTD harmless in the event of contravention of this. Should the Hirer have any doubt as to whether this can be complied with, it should ask BTHNW LTD to arrange a collection/delivery, subject to Charges (as applicable).

## 6. CHARGES AND PAYMENT

**6.1 Where to find the Charges.** The Charges (which includes VAT) will be the price indicated on the order pages (or otherwise notified to the Hirer) when the Hirer places the Order.

**6.2 Variation of the Charges.** BTHNW LTD will be entitled to vary the Charges and any Additional Charges at any time by giving written notice to the Hirer to reflect any variation in the cost of supplying the Equipment which arises as a consequence of:

6.2.1 any variation in the Hirer's requirements for the Equipment;

6.2.2 any information provided by the Hirer being inaccurate or incomplete; or

6.2.3 any failure or delay by the Hirer in providing information.

**6.3 A deposit or other payment information may be required.** At the time the Equipment is ordered, BTHNW LTD may require the Hirer to pay a deposit and/or require the Hirer to provide details of a valid credit or debit card and allow BTHNW LTD to take a deposit ("**Deposit**").

**6.4 Status of the Deposit.** The Deposit shall be a deposit against default by the Hirer of payment of any Charges or any Additional Charges or any loss of or damage caused to the Equipment.

**6.5 BTHNW LTD may off-set the Deposit against amounts owed by the Hirer to BTHNW LTD.** If the Hirer fails without due cause to make any payment of the Charges or any Additional Charges or any Replacement Cost or causes any loss or damage to the Equipment (in whole or in part), BTHNW LTD shall be entitled to apply the Deposit in part or in whole against any such costs and by providing the Deposit the Hirer specifically consents to this.

**6.6 Return of Deposit.** Unless BTHNW LTD is entitled to make a deduction from the Deposit in accordance with clause 6.5, the full amount of the Deposit will be returned to the Hirer at the end of the Hire Period.

**6.7 When the Hirer must pay and how.** The Hirer must pay the Charges at the time agreed in the Contract. Unless otherwise agreed by the parties in writing or in the Contract, any invoices submitted by BTHNW LTD shall be paid by the Hirer within a period of thirty (30) days from the end of the month in which the relevant invoice is issued.

**6.8 BTHNW LTD will pass on changes in the rate of VAT.** If the rate of VAT changes between the Order date and the date BTHNW LTD supplies the Equipment, BTHNW LTD will adjust the rate of VAT that the Hirer pays, unless the Hirer has already paid for the Equipment in full before the change in the rate of VAT takes effect.

**6.9 BTHNW LTD can charge interest if the Hirer pays late.** If the Hirer is a Consumer, the provisions of clause B 17 shall apply. If the Hirer is a Trader, the provisions of clause C 22.5 shall apply.

**6.10 Other remedies of BTHNW LTD for late payment.** Should any portion of an account fall overdue then the total account will become due on demand. The Hirer will be responsible for reasonable legal charges incurred by BTHNW LTD in the recovery of amounts due or the recovery of the Equipment. In addition BTHNW LTD is entitled to suspend further services to the Hirer.

**6.11** BTHNW LTD reserves the right to store the Customer's credit card details on its password protected customer account system and further reserves the right to use such details against future Rentals made by the Customer.

## **7. DAMAGE WAIVER AND DAMAGE WAIVER PLUS**

Damage Waiver or Damage Waiver Plus may be offered to the Hirer or, in some cases, may be a requirement by BTHNW LTD of its Contract with the Hirer. The provisions of clauses 7.1 to 7.5 shall apply if Damage Waiver or Damage Waiver Plus (as applicable) has been taken up by the Hirer. It is important to note that Damage Waiver and Damage Waiver Plus only provides you with cover within the thresholds set out in Clause 7.5.1 and as otherwise set out in this Clause 7.

**7.1 Damage Waiver:** Subject to the remainder of this clause 7, if the Hirer contracts to pay the Damage Waiver charge, being a sum equal to 10% of the Charges (where available as an option) BTHNW LTD will waive any further charges for rectifying accidentally damaged Equipment.

**7.2 Damage Waiver Plus:** Subject to the remainder of this clause 7, if the Hirer contracts to pay the Damage Waiver Plus charge being a sum equal to 15% of the Charges (where available as an option) BTHNW LTD will waive any further charges for (i) rectifying accidentally damaged Equipment; and/or (ii) theft of the Equipment.

**7.3 Conditions of Damage Waiver Plus applying:** The waiver provided by Damage Waiver Plus is subject to the following conditions:

7.3.1 the Hirer must be able to demonstrate that reasonable care has been taken to prevent theft;

7.3.2 theft of Equipment must be reported to the Police and a crime reference number obtained; and

7.3.3 the Hirer must notify BTHNW LTD within forty eight (48) hours of the theft and obtain an BTHNW LTD theft report form. The completed form must be returned to: Claims Department, BTHNW LTD, 72/80 Bolton Road, Blackburn, BB2 3PZ, 07707741699

**7.4 When Damage Waiver Plus will not apply.** Damage Waiver Plus shall not apply and the Hirer shall be responsible for any damage to, or loss of, the Equipment in the following circumstances:

7.4.1 theft of consumable goods;

7.4.2 theft due to the dishonesty, willful default or negligence of the Hirer, its employees, sub-contractors or agents;

7.4.3 theft from a vehicle where the Equipment was left visible and unattended;

7.4.4 loss of Equipment revealed only when an inventory is made or at collection;

7.4.5 loss arising from civil disturbance; and/or

7.4.6 loss occurring outside the UK and Ireland.

**7.5 Limitations and exclusions for Damage Waiver and Damage Waiver Plus:** Damage Waiver or Damage Waiver Plus does not cover the following and the Hirer shall remain responsible to BTHNW LTD for:

7.5.1 the first £50 or 20% of the Replacement Cost (whichever is the greater amount) of any Equipment damage or loss claim and any and all amounts of damage or loss exceeding £5,000 for any single Contract;

7.5.2 tyre punctures and/or Replacement Costs due to irreparable tyre damage;

7.5.3 damage or loss caused by the Hirer's negligence, damage or breach of the Contract including damage or loss connected to the Hirer's obligations set out in clause 4.6; and

7.5.4 damage or loss caused by or contributed to as a result of the misuse, neglect, alteration, mishandling or unauthorised manipulation of the Equipment by the Hirer.

## **8. VARIATION**

**8.1 Which version of our Terms apply to your order.** BTHNW LTD amends these Terms from time to time. Every time a Hirer orders Equipment from us, the terms in force at the time of the Order and available at BTHNW LTD.com will apply to the Contract between the Hirer and BTHNW LTD.

**8.2 Amending the Terms applicable to your Order.** BTHNW LTD may revise these Terms as they apply to an Order from time to time to reflect the following circumstances:

8.2.1 changes in relevant laws and regulatory requirement; and

8.2.2 changes to BTHNW LTD 'processes and procedures.

If BTHNW LTD have to revise these Terms as they apply to an Order, BTHNW LTD will contact the Hirer to give the Hirer reasonable advance notice of the changes and let the Hirer know how to cancel the Contract if the Hirer is not happy with the changes. The Hirer may cancel either in respect of all the affected Equipment or just any Equipment the Hirer has yet to receive. If the Hirer opts to cancel, BTHNW LTD will have to return (at BTHNW LTD 'cost) any relevant Equipment already received and BTHNW LTD will arrange a full refund of the price paid by the Hirer.

## **9. HOW BTHNW LTD MAY USE A HIRER'S PERSONAL INFORMATION How BTHNW LTD will use a Hirer's personal information.**

BTHNW LTD is the data controller of any personal information a Hirer provides to us. BTHNW LTD will collect and process such information in order to process and fulfil an Order.

If the Hirer is an individual providing BTHNW LTD with its own personal information, please see BTHNW LTD's privacy policy which is available on our website (<https://www.BTHNW LTD.com/hire/privacy-and-cookies-policy>) for further information on how personal information is used and rights in relation to that information.

If the Hirer is providing personal data of another individual to BTHNW LTD, the Hirer must tell that individual that the Hirer is providing their information to BTHNW LTD and show them a copy of this notice.

## **10. GENERAL**

**10.1 Even if BTHNW LTD delays in enforcing a Contract, BTHNW LTD can still enforce it later.** If BTHNW LTD fails to insist that the Hirer performs any of its obligations under a Contract or if BTHNW LTD does not enforce its rights against the Hirer, or if BTHNW LTD delays doing so, that will not mean that BTHNW LTD has agreed not to enforce its rights against the Hirer and will not mean that the Hirer does not have to comply with those obligations. If BTHNW LTD does waive a default by the Hirer, BTHNW LTD will only do so in writing, and that will not mean that BTHNW LTD will automatically waive any later default by the Hirer.

**10.2 If a court finds part of the Terms illegal, the rest will continue in force.** Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any term is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

**10.3 Nobody else has any rights under a Contract.** The parties do not intend that any term of a Contract shall be enforceable by any person other than the parties.

**10.4 The Hirer needs the consent of BTHNW LTD to transfer its rights to someone else.** The Contract is personal to the Hirer and the Hirer shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract without the prior written consent of BTHNW LTD.

## **11. GOVERNING LAW AND JURISDICTION**

**11.1 Which laws apply.** Subject to clause 11.2, these Terms and any and all Contracts and any non-contractual obligations arising out of or in connection with them will be governed by English law.

11.2 **Where you may bring legal proceedings.** BTHNW LTD and the Hirer both agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with these Terms and any and all Contracts (including in relation to any non-contractual obligations), except if the Hirer is a resident of or has its registered office in Scotland, either party may bring proceedings in Scotland in accordance with Scottish law.

## **PART B: TERMS APPLYING ONLY TO CONSUMERS**

### **12. LIABILITY**

12.1 **BTHNW LTD is responsible to the Hirer for foreseeable loss and damage caused by BTHNW LTD.** If BTHNW LTD fails to comply with the Contract, BTHNW LTD is responsible for loss or damage the Hirer suffers that is a foreseeable result of BTHNW LTD breaking the Contract or failing to use reasonable care and skill. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both the Hirer and BTHNW LTD knew it might happen, for example, if you specifically drew it to our attention during the sales process.

12.2 **BTHNW LTD does not exclude or limit in any way BTHNW LTD 'liability where it would be unlawful to do so.** This includes liability for:

12.2.1 death or personal injury caused by BTHNW LTD 'negligence or the negligence of BTHNW LTD 'employees, agents or subcontractors;

12.2.2 for fraud or fraudulent misrepresentation;

12.2.3 for breach of the Hirer's legal rights in relation to the Equipment including the right to receive Equipment; and

12.2.4 for any matter for which BTHNW LTD is not permitted by law to exclude or limit, or to attempt to exclude or limit, liability

12.3 **BTHNW LTD is not liable for business losses.** BTHNW LTD only supply the Equipment for domestic and private use. If the Hirer uses the Equipment for any commercial, business or re-sale purpose BTHNW LTD will have no liability to the Hirer for any loss of profit, loss of business, business interruption, or loss of business opportunity.

12.4 **AS A CONSUMER, THE HIRER HAS LEGAL RIGHTS AND REMEDIES IN RELATION TO THE PROVISION OF THE EQUIPMENT. ADVICE ABOUT THE HIRER'S LEGAL RIGHTS AND REMEDIES IS AVAILABLE FROM THE CITIZENS' ADVICE BUREAU. NOTHING IN THESE TERMS WILL AFFECT THE HIRER'S LEGAL RIGHTS AND REMEDIES.**

### **13. AUTOMATIC CANCELLATION OF CONTRACT**

**Automatic termination at day 88 of the Contract term.** Subject to BTHNW LTD 'and the Hirer's rights to cancel set out in the Contract, the Hire Period shall not exceed 88 days in any circumstances and each Contract will automatically end 88 days after the Commencement Date.

### **14. THE HIRER'S RIGHTS TO END THE CONTRACT**

14.1 **Ending the Contract because of something BTHNW LTD has done or are going to do.** If the Hirer is ending a Contract for a reason set out at clause 14.1.1 to

14.1.5 below the Hirer may end the Contract immediately and BTHNW LTD will refund the Hirer in full for any Equipment which has not been provided. The reasons are:  
14.1.1 BTHNW LTD has told the Hirer about an upcoming change to these Terms which the Hirer does not agree to;

14.1.2 BTHNW LTD has told the Hirer about an error in the price or description of the Equipment ordered and the Hirer does not wish to proceed;

14.1.3 there is a risk that supply of the Equipment may be significantly delayed because of events outside of BTHNW LTD 'control';

14.1.4 BTHNW LTD has suspended supply of the Equipment for technical reasons, or notify the Hirer that it is going to suspend it for technical reasons; or

14.1.5 the Hirer has a legal right to end the contract because of something BTHNW LTD has done wrong.

## 15. HOW TO END THE CONTRACT WITH BTHNW LTD

15.1 **Telling BTHNW LTD.** To exercise the right to cancel, the Hirer must inform BTHNW LTD by a clear statement (e.g. a letter sent by post or e-mail), using the information above under "**How to contact BTHNW LTD**" in clause 2.2 or by using the off-hire functionality provided on our website or the BTHNW LTD app.

15.2 **Returning Equipment after ending the Contract.** If the Hirer ends the Contract for any reason after Equipment has been dispatched or delivered to the Hirer, the Hirer must return them to BTHNW LTD or allow BTHNW LTD to collect them. Please call your local branch using the information above under "**How to contact BTHNW LTD**" in clause 2.2.

15.3 **Costs of return.** BTHNW LTD may pay the costs of return subject to BTHNW LTD being satisfied, acting reasonably, that:

15.3.1 the Equipment is faulty or misdescribed; or

15.3.2 the Hirer is ending the Contract because BTHNW LTD told the Hirer of an upcoming change to the Equipment or these Terms, an error in pricing or description, a delay in delivery due to events outside BTHNW LTD 'control' or because the Hirer has a legal right to do so as a result of something BTHNW LTD has done wrong.

In all other circumstances, the Hirer must pay the costs of return.

15.4 **What BTHNW LTD charges for collection.** If the Hirer is responsible for the costs of return and BTHNW LTD is collecting the Equipment from the Hirer, BTHNW LTD will charge the Hirer the direct cost to BTHNW LTD of collection.

15.5 **How BTHNW LTD will refund the Hirer.** BTHNW LTD will refund the Hirer the price the Hirer paid for hiring the Equipment including delivery costs, by the method the Hirer used for payment. BTHNW LTD will make any refunds due to the Hirer as soon as possible.

## 16. BTHNW LTD 'RIGHTS TO END THE CONTRACT

16.1 **BTHNW LTD may end the Contract if the Hirer breaks it.** BTHNW LTD may end the Contract at any time by writing to the Hirer if:

16.1.1 the Hirer does not, within a reasonable time of us asking for it, provide BTHNW LTD with information that is necessary for BTHNW LTD to provide the Equipment;

16.1.2 the Hirer does not, within a reasonable time, allow BTHNW LTD to deliver the Equipment to the Hirer or the Hirer does not collect them from BTHNW LTD; or

16.1.3 the Hirer otherwise breaks these Terms.

**16.2 The Hirer must compensate BTHNW LTD if it breaks the Contract.** If BTHNW LTD ends the Contract in the situations set out in clause 16.1, BTHNW LTD will refund any money the Hirer has paid in advance for the Equipment BTHNW LTD has not provided but BTHNW LTD may deduct or charge the Hirer reasonable compensation for the net costs BTHNW LTD will incur as a result of the Hirer breaking the Contract.

## 17. LATE PAYMENT

17.1 If the Hirer does not make any payment to BTHNW LTD by the due date, BTHNW LTD may charge interest to the Hirer on the overdue amount at the rate of 4% per annum above the base lending rate from time to time of Barclays Bank plc. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Hirer must pay BTHNW LTD interest together with any overdue amount.

## 18. IF THERE IS A PROBLEM WITH THE EQUIPMENT

18.1 **How to tell BTHNW LTD about problems.** If the Hirer has any questions or complaints about the Equipment, please contact BTHNW LTD by telephone or email using the relevant information above under “**How to contact BTHNW LTD**” at clause 2.2.

## PART C: TERMS APPLYING ONLY TO TRADERS

### 19. FORMATION OF CONTRACTS

**No Hirer Terms will apply to any Contracts.** Each Contract will be subject to these Terms to the exclusion of all other terms and conditions, including any terms or conditions which the Hirer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

### 20. THE EQUIPMENT

20.1 **Liability for damage to Hirer’s property.** BTHNW LTD shall have no liability to the Hirer for damage to the Hirer’s property if the Hirer fails to comply with clause 4.3.

20.2 **Consequences of parting with control of the Equipment.** If the Hirer without the prior written consent of BTHNW LTD, parts with control of the Equipment, the Hirer shall, immediately upon BTHNW LTD ’request procure the return of the Equipment to the Hirer. If the Equipment is not returned to the Hirer within 5 days of BTHNW LTD ’request, the Equipment shall be deemed to be lost and the Hirer shall be responsible for the replacement of the Equipment and the Charges and any Additional Charges will continue to apply until settlement is made to the satisfaction of BTHNW LTD.

20.3 **Equipment will comply with the Contract.** BTHNW LTD shall:

20.3.1 during each Hire Period, ensure that the Equipment shall be of satisfactory quality, comply with any description provided by the Hirer and shall be fit for its intended purpose; and

20.3.2 on the Commencement Date, ensure that the Equipment shall comply with all applicable laws and statutory regulations and any reasonable instructions and guidelines issued by the Hirer at the time of hire, including health, safety and security standards.

**20.4 What to do if the Equipment fails to comply with the Contract.** If, at any time during the Hire Period, the Hirer becomes aware of a breach of clause 20.3 the Hirer shall give written notice of the breach to BTHNW LTD as soon as reasonably possible once the Hirer has become aware of the breach.

**20.5 Remedies if the Equipment fails to comply with the Contract.** Following receipt of written notice under clause 20.4 BTHNW LTD will:

20.5.1 repair the Equipment;

20.5.2 replace the Equipment with equipment of an equivalent or similar specification; or

20.5.3 reduce the Charges of the relevant Equipment by a sum which is fair in the circumstance.

These are the Hirer's only remedy for a breach of clause 20.3.

**20.6 Circumstances where BTHNW LTD will not be liable.** BTHNW LTD shall not be responsible to the Hirer for any breach of clause 20.3 and shall not be required to repair or replace the Equipment in accordance with clause 20.5 if:

20.6.1 the breach arose directly as a result of any act or omission of the Hirer; and/or

20.6.2 the breach was caused by or contributed to as a result of the misuse, neglect, alteration, mishandling or unauthorised manipulation of the Equipment.

In such circumstances, and without prejudice to its other rights including those in clause 4.7, BTHNW LTD shall be entitled to charge the Hirer for attending Site to repair or replace Equipment.

## 21. DELIVERY

21.1 The Hirer shall procure that a duly authorized representative of the Hirer shall be present at the Site where the Equipment is to be delivered. Acceptance of delivery of the Equipment by such representative shall constitute conclusive evidence that the Hirer has accepted such delivery.

21.2 Time of delivery of the Equipment and/or performance of the Contract will not be of the essence.

21.3 If the Equipment is unavailable for inspection or collection within 5 days of the scheduled date for inspection or collection as agreed between BTHNW LTD and the Hirer, the Equipment shall be deemed to be lost and the Hirer shall be responsible for the replacement of the Equipment as set out in clause 4.7 and the Charges and any Additional Charges will continue to apply until settlement is made to the satisfaction of BTHNW LTD.

21.4 If BTHNW LTD delivers a quantity of the Equipment less than the quantity specified in the Order, the Hirer shall agree the shortages with BTHNW LTD and note the same on the delivery document. The Hirer may elect to:

21.4.1 refuse to take delivery of or reject the Equipment and the Hirer shall have liability for the cost of delivery only; or

21.4.2 take delivery of and keep the lesser quantity of Equipment or any part thereof and pay for them at the rate specified in the Order subject to a pro-rata reduction in the relevant Charges.

21.5 If BTHNW LTD delivers a quantity of Equipment greater than the quantity specified in the Order, the Hirer may elect to:

21.5.1 accept and pay for all the Equipment delivered at the Charges; or

21.5.2 accept and pay for the quantity specified in the Order and reject the excess.

## 22. CHARGES AND PAYMENT

22.1 **Withholding tax.** If the Hirer is required in accordance with the relevant tax laws to make any withholding in respect of taxes from payments made or due to BTHNW LTD, it shall provide BTHNW LTD with a certificate evidencing that withholding has been made and properly accounted for to the relevant tax authorities and shall provide BTHNW LTD with such assistance as may reasonably be required to enable BTHNW LTD to reclaim such taxes.

22.2 **Hirer's with Credit Accounts.** If BTHNW LTD has granted a credit account to the Hirer:

22.2.1 then payment of any Charges or any other sums due under the Contract, including VAT, shall be made in full cleared funds by the end of the month following the date of the invoice; and

22.2.2 BTHNW LTD may set a reasonable credit limit.

22.3 **BTHNW LTD may terminate if the credit limit is exceeded.** BTHNW LTD reserves the right to terminate or suspend the Contract if allowing it to continue would result in the Hirer exceeding its credit limit or the Hirer has already exceeded its credit limit.

22.4 **Invoice queries.** The Hirer should notify BTHNW LTD in writing of any queries concerning invoices within 14 days of the invoice date. BTHNW LTD will not grant an extension to credit account payment terms for unresolved invoice queries that have been notified after such date.

22.5 **Late payment.** If the Hirer does not make any payment to BTHNW LTD in full by the due date, without prejudice to any other rights of BTHNW LTD, BTHNW LTD may charge you interest (both before and after judgment) on the amount unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 and/or to suspend further Services to you or any of your associated companies.

## 23. BTHNW LTD 'LIABILITY

23.1 **Non-excludable liability.** Neither party excludes or limits its liability, if any, to the other party for:

23.1.1 death or personal injury resulting from its negligence or by the negligence of a person for whom it is vicariously liable;

23.1.2 any breach of its obligations implied by section 2 of the Supply of Goods and Services Act 1982;

23.1.3 for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or

23.1.4 any matter which it would be illegal for it to exclude or to attempt to exclude its liability.

**23.2 Tangible property liability.** Subject to clauses 23.1 and 23.4, BTHNW LTD 'maximum aggregate liability to the Hirer for loss of or damage to tangible property caused by its negligence or act or omission shall be limited to five million pounds (£5,000,000).

**23.3 BTHNW LTD 'aggregate liability.** Subject to clause 23.1 and 23.4, BTHNW LTD 'maximum aggregate liability to the Hirer arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of BTHNW LTD 'obligations under the Contract but excluding any liability which falls within clause 23.1, shall be limited in respect of each Contract, to the Charges and other sums paid or payable in respect of that Contract as specified in the Order.

**23.4 Excluded types of liability.** Subject to clause 23.1, neither party shall have any liability to the other party for any:

23.4.1 loss of profit (direct or indirect);

23.4.2 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);

23.4.3 loss of goodwill, loss of reputation, loss of opportunity and/or loss of operation (in each case whether direct or indirect);

23.4.4 loss of anticipated saving or loss of margin (in each case whether direct or indirect);

23.4.5 liability of the other party to third parties (whether direct or indirect); or

23.4.6 indirect, consequential or special loss,

arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of that party's obligations under the Contract and/or any defect in or breakdown of the Equipment or the Equipment's unsuitability for the Hirer's intended purpose.

**23.5 The Effect of clause 23.4 on the Hirer's liability.** Clause 23.4 shall not limit or exclude BTHNW LTD 'ability to claim against the Hirer in respect of:

23.5.1 any loss of or damage to Equipment subject to any Damage Waiver or Damage Waiver Plus applying;

23.5.2 the ability to recover the Charges applicable for any remaining Hire Period on early termination of any Contract as set out in these Terms; and/or

23.5.3 costs and expenses in respect of recovery of the Equipment as set out in these Terms.

23.6 **BTHNW LTD 'entire liability.** The Contract set out the full extent of BTHNW LTD 'obligations and liabilities in respect of the Equipment including the hire of Equipment to the Hirer. There are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Hirer except as specifically stated in the Contract. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

## 24. CANCELLATION

24.1 **The Hire Period will not exceed 85 days.** Where the hire is to a Hirer who is an "individual" (which includes without limitation a sole trader or partnership) under the Consumer Credit Act 1974, the Hire Period shall not exceed 85 days, after which time the relevant Contract shall be deemed to have automatically terminated.

24.2 **Grounds for mutual termination.** Either party may, immediately on giving written notice to the other party, terminate the Contract and/or the relevant Contract without payment of compensation if the other party:

24.2.1 commits a material breach of the Contract which is incapable of remedy;

24.2.2 commits a material breach of the Contract which can be remedied but fails to remedy that breach within seven (7) days of a written notice setting out the breach and requiring it to be remedied being given by the other party; and/or

24.2.3 becomes Insolvent and each party shall notify the other party immediately upon becoming Insolvent.

24.3 **Termination on Notice.** Either party may terminate the Contract on giving the other party not less than five (5) days 'notice in writing.

24.4 **BTHNW LTD 'rights to terminate.** BTHNW LTD may terminate the Contract immediately on giving written notice to the other party if:

24.4.1 the Equipment is lost, stolen, seized, confiscated or in BTHNW LTD 'reasonable opinion or the opinion of its insurer(s), damaged beyond repair;

24.4.2 the Hirer fails to pay any of BTHNW LTD 'invoices within thirty (30) days from the due date for payment; or

24.4.3 the Hirer (or its associated persons, agents or subcontractors) is shown not to be running its business in accordance with applicable law and regulations and with high levels of governance and ethical standards or cannot evidence such standards by way of appropriate policies and controls (or otherwise) to BTHNW LTD's reasonable satisfaction, including but not limited to compliance with the Bribery Act 2010, the Modern Slavery Act 2015, the Criminal Finances Act 2017 (anti-facilitation of tax evasion) and the General Data Protection Regulation.

24.5 **Accrued rights and remedies will not be prejudiced by termination or expiry.** The termination of the Contract (or any part of it) shall be without prejudice to the rights and remedies of either party which may have accrued up to the date on which the Contract expires or is cancelled for whatever reason.

**24.6 Consequences of termination or expiry.** Upon the termination or expiry of the Contract, howsoever caused, without prejudice to any other rights or remedies of BTHNW LTD:

24.6.1 BTHNW LTD shall be entitled to invoice all Charges and Additional Charges incurred which have not yet been invoiced;

24.6.2 the Hirer shall pay on demand all Charges and Additional Charges which are due but are unpaid at the date of demand, together with any interest accrued; and

24.6.3 the Hirer shall pay on demand all costs and expenses incurred by BTHNW LTD in recovering the Equipment and/or in collecting any sum due under the Contract (including any storage, transport, insurance, repair, legal and remarketing costs).

**24.7 Hirer's rights to Equipment ends when the Contract ends.** Without prejudice to the remainder of these Terms, on the termination or expiry of any Contract BTHNW LTD 'consent to the Hirer's possession of the Equipment shall terminate and BTHNW LTD may take possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located.

**24.8 Definition of Insolvent. "Insolvent"** means where a person ceases to trade, is unable to pay its debts as they fall due or where a person becomes, or is likely to become, insolvent or bankrupt including where a person has a receiver, administrative receiver, administrator or provisional liquidator appointed; is subject to a notice of intention to appoint an administrator; passes a resolution for its winding-up has a winding up order made by a court in respect of it; enters into any composition or arrangement with creditors (save in respect of a solvent restructuring) or has any steps or actions taken in connection with any of these procedures in any jurisdiction.

## 25. INTELLECTUAL PROPERTY RIGHTS

No right of licence is granted to the Hirer in respect of any intellectual and industrial property rights whether registered or unregistered (including know how and rights to prevent passing off) in the United Kingdom and all other countries in the world and together with all applications, renewals and extensions of the same of BTHNW LTD, except the right to use the Equipment in the Hirer's ordinary course of business for the purpose for which they were supplied.

## 26. CONFIDENTIALITY

**26.1 Use of Confidential Information.** Each party will keep secret and confidential all confidential information concerning the business, affairs, customers, clients or suppliers of the other party which is disclosed or obtained in connection with the Contract and/or any Contract and shall not use nor disclose the same save for the purposes of the Contract or with the prior written consent of the relevant party. Where disclosure is made to any employee, consultant, sub-contractor or agent, who needs to know the confidential information for the purposes of the Contract and/or any Contract it shall be done subject to the obligations set out in the Contract and each party shall procure that any such employee, consultant, sub-contractor or agent complies with such obligations.

**26.2 Exceptions to obligations of confidentiality.** The obligations of confidentiality in this clause shall not extend to any matter which:

26.2.1 is in or enters the public domain other than as a result of a breach of the obligations of confidentiality under the Contract; or

26.2.2 is independently disclosed by a third party entitled to disclose the same; or

26.2.3 is required to be disclosed under any applicable law, or by order of a court, governmental body or authority of competent jurisdiction.

## 27. NOTICES

**27.1 Method and Address for notices.** Any notices sent under the Contract must be in writing, delivered by hand or sent by pre-paid first class post or recorded delivery to the parties at their registered addresses. Any notice or communication given in accordance with clause 27.1 shall be deemed to have been served:

27.1.1 if delivered by hand, at the time of delivery; or

27.1.2 if sent by pre-paid first class post or recorded delivery at 9.00 a.m. on the second Business Day after the date of posting.

**27.2 Clause not applicable where the Civil Procedure Rules apply.** This clause 27 shall not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

## 28. GENERAL

**28.1 Entire Agreement.** The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

28.1.1 neither party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement which is not expressly set out in the Contract; and

28.1.2 nothing in this clause 28.1 shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

**28.2 No Partnership.** Nothing in the Contract and no action taken by the parties in connection with it or them shall create a partnership or joint venture or relationship of employer and employee between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.

**28.3 Independent Contractor.** Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.

The customer, by signing, hereby acknowledges that they have read and accept all terms and conditions as outlined in the preceding pages.

Customer Name (BLOCK CAPITAL):

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Customer Address:

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Customer Signature:

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Date:

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Blackburn Tool Hire North West (Signature):

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Date:

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