

# Terms & Conditions For Hire & Sales – Davro Site Services Limited T/A Maxispace

These terms and conditions (“**Conditions**”) apply to the Services provided by Davro Site Services Limited, a limited company registered in England and Wales (company number 01689131) whose registered office is at Charles Lake House Claire Causeway, Crossways Business Park, Dartford, Kent, DA2 6QA (referred to as “**Maxispace**” or “**we**” or “**us**”) to the Customer.

These Conditions apply to all Buildings and Services we provide. If there is any conflict between these Conditions and any specific terms included in your Order Confirmation, then the Order Confirmation shall apply.

If you do not agree to these Conditions you must cease to continue to order any Unit(s) or Services from us. Ordering any of our Units or Services, will be deemed as conclusive acceptance of these Conditions. You shall be referred to these Conditions during the Order process.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Contract and these Conditions, the following expressions shall have the following meanings:

“**Brexit**”: the United Kingdom ceasing to be a member of the European Union, regardless of which countries comprise the United Kingdom at such date;

“**Brexit Event**”: any of the following events if caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:

- a. a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, “Law” means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
- b. in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports; or
- c. in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by a party;

**Unit(s)**: means the modular Unit(s) specified in the Order Confirmation and any other equipment, installations, and other tangible property which Maxispace has agreed to hire to the Customer in accordance with this Contract.

**Business Day**: means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Collection Charges:** means the charges payable by the Customer to Maxispace in respect of the collection of the Unit(s) at the expiry or termination of the Contract Term (howsoever arising) including (without limitation) the cost of dismantling, loading and unloading, site survey and any other charges incurred or sustained by Maxispace in relation to the collection or recovery of the Unit(s) will be payable at Maxispace's current rates at the time of collection.

**Commencement Date:** means the date of commencement of the Contract Term in accordance with the Order Confirmation, subject to variation in accordance with the Conditions, where any variation to the estimated Installation date arises.

**Conditions:** means the terms and conditions set out here as amended from time to time in accordance with clause 16.

**Contract:** means this contract between Maxispace and the Customer for the Installation and hire or sale of the Unit(s), in accordance with the Order Confirmation, the HAE Conditions, and these Conditions.

**Contract Term:** means the term of hire of the Unit(s), being the initial period of hire specified in the Order Confirmation and any subsequent period during which Maxispace continues to hire the Unit(s) to the Customer (if any).

**Customer:** means the company, firm, person, partnership or public authority who is hiring or purchasing the Unit(s) from Maxispace specified in the Order Confirmation and includes their successors or personal representatives.

**Delivery Date:** has the meaning given to it

**Deposit:** means any deposit specified in the Order Confirmation payable by the Customer in respect of the Installation of the Unit(s).

**Force Majeure Event:** means any circumstance not within a party's reasonable control including, without limitation:

- a. acts of God, flood, drought, earthquake or other natural disaster;
- b. epidemic or pandemic;
- c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d. nuclear, chemical or biological contamination or sonic boom;
- e. any law or any action taken by a government or public authority, including without limitation a lockdown, imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- f. collapse of Units, fire, explosion or accident;
- g. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- h. non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- i. interruption or failure of utility service.

**HAE Conditions:** means the Hire Association Europe model terms for the hiring of plant, as amended or supplemented by these Conditions.

**Hire Charges:** means the monthly hire payments due in advance from the Customer to Maxispace in respect of the hire of any Unit(s), as specified in the Order Confirmation.

**Installation:** means installation and de-installation of the Unit(s) at the Site.

**Installation Charges:** means the payment due in advance from the Customer to Maxispace in respect of the Installation of any Unit(s), as specified in the Order Confirmation, and any other payments due in relation to Installation in accordance with clause 4.5, clause 4.11 and clause 4.12.

**Insured Risks:** means those risks in relation to the Unit(s) in respect of which Maxispace has obtained insurance in respect of loss or damage.

**Liability:** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities.

**Losses:** means any losses, claims, judgements, costs (including costs of enforcement and reasonable and properly incurred legal costs), damages, awards, charges, demands, customs duties taxes, proceedings, penalties, fines, expenses and/or any other liabilities incurred or sustained.

**Maintenance:** maintenance of the Unit(s) at the Site, as specified in the Quotation Form and Order Confirmation.

**Maintenance Charges:** means the monthly payments due in advance from the Customer to Maxispace in respect of any Maintenance carried out on Unit(s), as specified in the Order Confirmation.

**Order:** means a request for specific Services by the Customer in writing or by telephone.

**Order Confirmation:** means as defined in clause 2.4 below.

**Purchase Price:** means the purchase price payable for the Unit(s) by the Customer as set out in the Order Confirmation and in accordance with the conditions of sale at clause 9.

**Quotation Form:** means the form issued by Maxispace setting out the Unit(s) and/or Services to be provided, either on a hire or sales basis.

**Services:** the installation and Maintenance services provided by Maxispace under the Contract in relation to the Unit(s).

**Site:** means the site to which the Unit(s) is/are delivered (or to be delivered) as specified in the Order Confirmation, or as otherwise agreed by the parties in writing.

**Specification:** means the specification of the Unit(s) (including drawings, plans, technical and commercial information) as set out in the Quotation Form.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

## 1.2 Interpretation

- a. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b. A reference to a party includes its personal representatives, successors and permitted assigns.
- c. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- d. Headings in these Conditions shall not affect their interpretation.

- e. Any obligation in these Conditions on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- f. In the event of any conflict between these Conditions and the HAE Conditions, the terms of these Conditions shall prevail.

## **2. Basis of Contract**

**2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

**2.2** If there is any conflict between these Conditions and any specific terms included in the Order Confirmation, then the Order Confirmation shall apply.

**2.3** An Order in response to a Quotation Form constitutes an offer by the Customer to purchase the Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate and acknowledges that they have been referred to these Conditions by Maxispace prior to placing an Order. It shall be the Customer's responsibility to ensure that the Specification meets the Customer's requirements in relation to the Installation, Services and hire of the Unit(s).

**2.4** The Order shall only be deemed to be accepted when Maxispace issues a written acceptance of the Order or Telephone Order ("**Order Confirmation**").

**2.5** Any samples, drawings or advertising produced by Maxispace and any descriptions or illustrations contained in Maxispace's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Units referred to in them. They shall not form part of the Contract nor have any contractual force.

**2.6** A quotation for the Services set out in a Quotation Form shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

## **3. Duration and Maximum Period of Hire**

**3.1** The Contract Term shall commence on the Commencement Date and shall continue until the expiry of the Contract Term, subject to termination in accordance with these Conditions. Maxispace reserves the right to specify a date of return of the Unit(s) on the Order Confirmation.

**3.2** Subject to clause 11, the Unit(s) and/or Services supplied under the Contract shall continue to be supplied by Maxispace for the period of time specified in the Order Confirmation, or in the absence of a specified time period in the Order Confirmation, until the Contract is terminated by one of the parties in accordance with clause 11.

**3.3** In accordance with the Consumer Credit Act 1974, if the Customer is a partnership, sole trader or other unincorporated body, then the Contract Term will not be more than 3 (three) consecutive calendar months and the Contract Term shall automatically terminate on or before the last day of that three calendar month period. Accordingly, the hire of any Unit(s) is not covered by the Consumer Credit Act 1974. The Customer warrants that it is hiring the Unit(s) in the ordinary course of its business.

**3.4** Should the Customer wish to keep the Unit(s) for a period longer than that originally determined in the Order Confirmation, then this must be agreed by Maxispace in writing and the Customer will pay the relevant additional Hire Charges for the extended period.

**3.5** If the Customer fails to allow Maxispace access to the Site or fails to make the Unit(s) available for collection by Maxispace at an agreed time at the end of the Contract Term, Maxispace shall be entitled to charge the Customer additional Hire Charges up to and including the date on which the Unit(s) is/are back in the possession of Maxispace and the Customer shall indemnify Maxispace for reasonable costs incurred by Maxispace resulting from the unavailability of the Unit(s), including but not limited to having to obtain any Unit(s) to comply with other hire contracts to supply other Maxispace customers.

## **4. Delivery, Installation and Collection of the Unit(s)**

**4.1** Any time specified for delivery or Installation in the Order Confirmation ("**Delivery Date**") or the Specification is an estimate only and is not guaranteed. The Customer acknowledges that time of delivery or Installation shall not be of the essence of this Contract.

**4.2** The Customer shall have no right to damages or to cancel this Contract for failure for any cause to meet any Delivery Date stated. The Delivery Date shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals and delivery details from the Customer in writing, and subject to completion of the final Site survey to the satisfaction of Maxispace. Any alterations by the Customer in relation to the Specification or failure by the Customer to comply with any obligations on its part to facilitate delivery of the Unit(s) may result in delay in delivery and Installation an increase to the Installation Charges set out in the Order Confirmation.

**4.3** The Customer shall at its own expense provide suitable foundations for the Unit(s), such foundations to conform to the Specification or any subsequent notification or instruction provided by Maxispace to the Customer in relation to the requirements for foundations.

**4.4** The Customer shall procure free, unrestricted, appropriate and safe access to and from the relevant Site for delivery, unloading, reloading and recovery of the Unit(s), and procure sufficient unloading space, facilities, equipment and access to power supplies and utilities for Maxispace's employees, subcontractors and/or agents to allow them to carry out the Services. The Customer shall ensure that the Site where the Services are to be performed is, where necessary, cleared and prepared before the Services are due to commence. The Customer shall be responsible for ensuring that the Site is firm and level. Where Maxispace has agreed to position the Unit(s) in a specific location, the Customer must have an authorised representative available at the time of delivery to provide instructions regarding that position.

**4.5** Prior to the Quotation Form being sent to the Customer, and again prior to the estimated Installation date, Maxispace shall undertake a Site survey to ensure that the Customer has complied with its obligations as regards foundations and any other preparations for Installation contained in the Specification or otherwise notified in writing to the Customer. If in the opinion of Maxispace the Site is not ready for Installation, Maxispace may notify the Customer to that effect and the parties shall co-operate in good faith thereafter with a view to rearranging

Installation on an alternative date. In such circumstances, the Customer shall be liable to pay Maxispace any additional Installation Charges due as a result of the delayed Installation.

**4.6** Maxispace will endeavour to comply with reasonable requests by the Customer for postponement of the Delivery Date but shall be under no obligation to do so. Where the Delivery Date is postponed otherwise than due to default by Maxispace:

1.
  - a. the Customer shall be liable for any additional delivery charges or Installation Charges arising by virtue of delay or postponement;
  - b. the Contract Term shall be deemed to have commenced on the Commencement Date specified in the Order Confirmation and the Customer shall become liable for any Hire Charges payable in accordance with these Conditions with effect from that Commencement Date (notwithstanding the delay in Installation); and
  - c. Maxispace shall be entitled to terminate this Contract upon giving the Customer five working days' notice in writing of its intention to do so.

**4.7** Maxispace shall accept no liability for any delay, cost or other liability arising as a result of any default on the part of either the Customer or any subcontractor engaged by the Customer for the purposes of Installation (or subsequent maintenance of the Unit(s)).

**4.8** The Customer authorises Maxispace to accept the signature on delivery and collection of the Unit of any person reasonably holding themselves out to be the Customer's representative whether such person be authorised or not.

**4.9** The Specification assumes that the Site is capable of accepting large vehicles and heavy mobile cranes, and Maxispace shall not be any consequential loss or damage arising from use of the said vehicles and/or cranes. Maxispace shall not be responsible for any underground structures, cables, drains etc not clearly disclosed and or identified by the Customer and expressly referred to in the Specification. The Customer is responsible for ensuring safe access and suitable ground conditions, to comply with all aspects of safe working practices.

**4.10** The Customer shall pay all costs (at Maxispace' rates current from time to time) relating to the loading, transporting and unloading of the Unit(s) set out in the Quotation Form and Order Confirmation upon delivery and collection of the Unit to/from the Customer's Site.

**4.11** Any assumption made regarding craneage requirements contained in the Specification is always subject to a final Site survey. Where any variation in the provision of craneage arises (whether as a result of weather conditions, safety considerations or any other factor), then any additional costs incurred by Maxispace, will be chargeable to the Customer by way of additional Installation Charges, which shall be payable within 30 days of receipt of Maxispace' invoice therefor, in addition to the Deposit and the Hire Charges.

**4.12** Foundations, all forms of external paving, external plinths, access ramps, steps and fire escape facilities are excluded from the Installation Charges contained in the Specification unless expressly stated in the Specification to be included. Maxispace cannot be responsible for abnormal ground conditions, and therefore any additional foundation work required due to abnormal conditions or Unit inspection requirements will be chargeable to the Customer as additional Installation Charges.

**4.13** Unless expressly stated otherwise in the Order Confirmation, Maxispace is not liable for either the cost or responsibility for arranging utility connections to the Unit(s) (including without limitation, gas, electricity, water, drainage, telephone lines or IT connections) and it shall be the

Customer's responsibility to ensure that all such utilities, connections and services are available for connection to the Unit(s) at its estimated or rearranged date for Installation and throughout the Contract Term.

**4.14** The adequacy and existence of all external services are the Customer's responsibility and any costs arising which are due to any third party supplier or provider are the responsibility of the Customer.

**4.15** Maxispace reserves the right to make any changes in the Specification of the Unit(s) which are required to conform to any applicable statutory, legislative or other requirements relevant to the hire or sale of the Unit(s) or, where the Unit(s) is/are supplied to the standard specification of Maxispace, which do not materially affect their quality or performance.

**4.16** The Customer shall provide at least 28 (twenty eight) days written notice, in writing, if the Customer wishes the Unit(s) to be collected by Maxispace on a specific date and the Customer shall obtain an off hire reference number from Maxispace. The Customer shall sign any collection note provided by Maxispace at the time of collection of the Unit(s).

**4.17** When any Unit(s) is/are confirmed by Maxispace as off hired, that or those Unit(s) must be accessible for collection by Maxispace at any time. If Maxispace is unable to access the Unit(s) for collection, the Hire Charges will continue to apply until Maxispace is able to access the Unit(s) for collection.

**4.18** Upon removal of the Unit(s), the removal of foundations, services and all other infrastructure will be the responsibility of the Customer unless otherwise agreed in writing and placed accordingly.

**4.19** Following completion of the collection of the Unit, Maxispace shall be entitled to invoice the Customer for the Collection Charges, which invoice shall be paid within 30 days of issue.

**4.20** Following service of a Termination Notice in accordance with Clause 6.3 Maxispace shall undertake a final Site survey. It shall be the Customer's responsibility to thereafter ensure that Maxispace has adequate access to the Site to collect the Unit(s) on the date proposed for its/their collection, which will include ensuring that all appropriate ground works have been completed in accordance with the requirements of the Site survey to enable collection and dismantling to take place in a safe and orderly manner.

**4.21** Unless expressly stated in the Specification (and priced accordingly), the Hire Charges, Installation Charges and any other sums payable under the Contract are provided on the basis that the components used in the Unit(s), and in any fixtures, fittings or other products incorporated as part of the supply may or may have been subject to prior use. Where the Customer requires the Unit(s) and associated products to be supplied on an entirely new basis, it is the Customer's responsibility to ensure that the Specification states this, and this will be reflected in the price payable under the Contract by the Customer. If following Installation, the Customer subsequently requests any upgrade of the Unit(s), components or associated products included within the supply, then the Maxispace reserves the right to increase the level of the Hire Charges payable.

## **5. Customer Obligations and Use of Units**

**5.1** The Customer shall be responsible to Maxispace for the duration of the Contract Term for safekeeping of the Unit(s) and agrees to use it/them in a proper and workmanlike manner. The Customer shall not use the Unit(s) for any purpose beyond the Unit(s)'s capacity or in any manner which, in the opinion of Maxispace, is likely to result in undue deterioration or it becoming immobilised, immovable or otherwise inaccessible.

**5.2** The Customer shall keep the Unit(s) in good and substantial repair and condition, applying the procedures for servicing and repair in this clause 5 and for maintenance in accordance with clause 6.

**5.3** The Customer shall at all reasonable times permit Maxispace and its agents access to the Unit(s) to inspect test, adjust, repair, alter or replace the same.

**5.4** The Customer shall not (except as required by these Conditions) without the prior written consent of Maxispace adjust repair or alter the Unit(s) or make any attempt so to do or permit any third party so to do, other than with the written authority of Maxispace.

**5.5** If at any time during the Contract Term the Unit or any part thereof is in need of adjustment or repair then:-

- a. the Customer shall give written notice of the need for repair to Maxispace;
  - a. Maxispace shall with reasonable diligence either carry out the necessary adjustment or repair on Site, or at its discretion arrange for the removal of the Unit(s) or part or parts thereof to Maxispace' works for adjustment or repair;
  - b. in the event of Maxispace removing the Unit(s) or any parts thereof Maxispace may at its opinion adjust or repair and re-deliver the Unit(s) or such parts or parts to the Site or give written notice to the Customer that the Unit(s) or such part or parts shall be replaced in which case this Contract shall continue as if the substituted product or such part or parts had been or had been included in the subject matter of the Contract;
  - c. in the case of adjustment repair or substitution Maxispace may at its option apply Maxispace' hire rates current at the date of completion of adjustment repair or substitution in place of those set out in the Contract in respect of any such adjusted repaired or substituted Unit as from the date of such completion;
  - d. if in the reasonable opinion of Maxispace the Unit(s)'s condition necessitating adjustment or repair arises in whole or in part from any cause other than fair wear and tear then:-
- b. the Customer shall be liable for all costs of repair, inspection, loading, unloading and transport in connection with the carrying out of the adjustments or repairs or the removal of the Unit(s) or any part or parts thereof and the re-delivery thereof or of any substitute therefor; and
  - a. Hire Charges shall continue to be payable as if the Unit had not been in need of adjustment or repair;

**5.6** Upon termination the Unit(s) will be inspected on Site by Maxispace and any charges for damages/repairs excluding fair wear and tear will be chargeable to the Customer.

**5.7** The Customer shall be responsible for the carrying out of all statutory inspection tests in accordance with the appropriate regulations during the Contract Term. This will include but not be exclusive to electrical, gas and water services and electrical appliances. The Customer shall indemnify Maxispace in full for all costs damages or Losses howsoever caused arising out of or connected with the failure by the Customer to comply with any such statutory inspection tests or regulations.



**5.8** Unless otherwise agreed in writing between the parties, the Customer is responsible for procuring planning permission and Units regulations approval. If the Customer instructs Maxispace to proceed to installation of the Unit(s) without all requisite planning permissions and Unit regulations approval having been obtained, then such Installation is entirely at the Customer's risk and Maxispace shall have no Liability for any Losses suffered by the Customer or any third party in relation to the Customer's failure to obtain the necessary permissions and approval.

**5.9** Where Maxispace acts as the Customer's agent to procure planning permission or Unit regulations approval, the costs of the application are payable in advance to Maxispace and Maxispace shall have no Liability to the Customer for the outcome of the applications.

**5.10** The Unit(s) shall not be moved from the Site to which it was delivered or consigned without the authority of Maxispace, such authority to be confirmed in writing prior to any such movement taking place.

**5.11** Maxispace retains the right to affix a mark or plate on the Unit(s) to identify it/them as the property of Maxispace and the Customer shall not remove, deface or cover up any such mark or plate.

**5.12** The Customer shall not be permitted to affix any mark or plate on the Unit(s) unless prior written authority has been given by Maxispace. If permission is granted under this clause 5.12, the Customer will be responsible for the cost of rectification or reinstatement to the Unit(s) at the end of the Contract Term.

**5.13** The Customer must ensure that any person who uses the Unit(s) is properly instructed on how to use it safely and correctly.

**5.14** It is the Customer's responsibility that the Unit(s) must be returned clean and free from waste materials, and that effluent tanks must be emptied.

**5.15** The Customer is solely responsible for applying for, obtaining and complying with the obligations imposed by any statutory regulations and all third party rights in relation to the Installation, use and removal of the Unit(s) including but without prejudice to the generality of the Unit Regulations Acts and all obligations and third party rights relating to the purposes for which the Unit(s) is used or to its condition, delivery, placement or removal. The Customer shall indemnify Maxispace in full for all Losses howsoever caused arising out of or connected with the failure by the Customer to comply with any such statutory requirements.

## **6. Maintenance and Damage at end of Contract Term**

**6.1** Responsibility for the Maintenance will be allocated as follows:

1.
  - a. Maxispace will be responsible for the replacement of inherent defects and faulty parts in accordance with Maxispace's standard written policy for maintenance issued to the Customer from time to time;
  - b. the Customer will be responsible for all damage caused to the Unit as a result of its use (excluding fair wear and tear).

**6.2** The following items will be accepted as fair wear and tear by Maxispace at the end of the Contract Term:

1.
  - a. Marks to paintwork to door casing and window linings;

- b. Finger marks on doors;Wear to door handles; and
- c. Marks to paintwork to entrance doors.

**6.3** If the Customer wishes to terminate its use of the Unit(s) at the end of the Contract Term, the Customer shall give Maxispace 28 days' notice in writing to terminate its hire of the Unit(s) under the Contract ("**Termination Notice**"). Any such notice may not be given to have effect prior to the expiry of the Contract Term.

**6.4** Within a reasonable period following receipt of the Termination Notice, Maxispace will carry out an inspection of the Unit(s) and provide a written schedule of dilapidations to the Customer specifying repairs required to the Unit(s), fixtures and fittings, and the Customer shall be responsible for these repairs, excluding repairs required for fair wear and tear.

**6.5** If damage to the Unit(s) is of such an extent that the Unit(s) and a material amount of its/their component parts cannot be reused, then Maxispace reserves the right to claim compensation for loss of future use at a rate equivalent to the current market rate for the Hire Charges being paid by the Customer to Maxispace at the expiry of the Contract Term. Maxispace shall be entitled to invoice the Customer on a monthly basis for such loss of use and any such invoice shall be payable within 30 days in accordance with Maxispace's standard terms.

**6.6** The Customer will be responsible for returning the Unit(s) in a clean condition, including all internal floors, walls and ceilings. Where the use of the Unit(s) has involved a specialist use such as medical activities, or other activities involving potentially dangerous substances, the Customer will arrange for certification that the equipment and contents have been properly cleaned.

**6.7** Should the Customer leave any abnormal substances inside or attached to the Unit(s), then Maxispace reserves the right to inform the Health and Safety Executive and the Customer shall indemnify Maxispace for any Losses suffered by Maxispace in relation to those substances.

**6.8** The Customer will be responsible for the removal of all third party furniture and equipment prior to the dismantling of the Unit(s). Maxispace will invoice the Customer at the end of the Contract Term for the costs of disposing of or moving third party furniture.

**6.9** The Customer is responsible for the safe keeping of the Unit(s) during the Contract Term and for its return to Maxispace at the Contract Term. If the Customer fails to return the Unit(s) for whatever reason whether as a result of theft, loss, destruction or otherwise, whether due to negligence on the part of the Customer, its servants and/or agents or not the Customer shall be liable to Maxispace for:

1.
  - a. the cost of replacement of the Unit(s) together with all costs arising therefrom; and
  - b. Maxispace' Hire Charges until payment of the costs except to the extent that any such loss arises as a result of Insured Risks and Maxispace receives payment from its insurers in respect of any loss falling within the terms of this clause 6.9.

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

**7.1** Maxispace shall maintain in force during the Contract Term insurance in respect of the Insured Risks.

**7.2** In the event that during the Contract Term the Unit(s) become a total loss or a constructive total loss (whether as a result of its being lost, destroyed, damaged beyond repair, confiscated or otherwise) ("**Destroyed Unit**") the Contract Term shall cease. In that event Maxispace may apply any insurance proceeds received by it at its discretion:

1.
  - a. towards a replacement Unit of equivalent size and value to the Unit(s) which replacement shall be deemed included in this Contract for all purposes of the Customer shall continue to be liable to pay Hire Charges in accordance with this Contract as if such loss has not taken place, in which event the Customer and Maxispace shall cooperate in the re-delivery and installation of any replacement Unit in accordance with the procedure implemented for delivery and installation of the original Unit in accordance with these Conditions; or
  - b. towards payment to Maxispace of all payments of Hire Charges and all other monies then due or in arrears under this Agreement in respect of or attributable to the Destroyed Unit together with interest at 4% above the base rate from time to time of Maxispace's bank

**7.3** The Customer shall remain liable to Maxispace for any shortfall. Until such sums and any shortfall as aforesaid are paid the obligations of the Customer under this Agreement (including those to pay Hire Charges in respect of the Destroyed Unit) shall continue.

**7.4** Ownership of the Unit(s) remain(s) at all times with Maxispace. The Customer has no right, title or interest in the Unit(s) except that they are hired to the Customer.

**7.5** The Customer must not deal with the ownership or any interest in the Unit(s). This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending. The Customer shall indemnify Maxispace against all Losses that may be occasioned by any failure to observe and perform this clause 7.5.

**7.6** Risk in the Unit(s) shall pass immediately to the Customer when they leave the physical possession or control of Maxispace at any time after the Order Confirmation.

**7.7** Risk in the Unit(s) shall not pass back to Maxispace from the Customer until the Buidling(s) is/are back in the physical possession of Maxispace. This shall apply even if Maxispace has agreed to cease charging the Hire Charges.

**7.8** The Customer shall, during the Contract Term, be responsible for the safety of all personal property, items and Unit(s) left in any Unit by the Customer, its employees, subcontractors and agents and the Customer shall indemnify and keep indemnified Maxispace in respect of all claims for the loss or theft of such personal property, items and Unit(s).

**7.9** The Customer will be given 7 days' notice to collect any property, items or Unit(s) which have been found in the Unit(s) upon its/their return to Maxispace. Any property, items or Unit(s) remaining in the returned Unit(s) after this time shall be destroyed and Maxispace shall have no liability in respect of such property, items or Unit(s).

## **8. Payment**

**8.1** Any Deposit specified in the Order Confirmation is due for payment in cleared funds in full without deduction or set off. Maxispace shall not be liable to install the Unit(s) until such Deposit has been received from the Customer.

**8.2** The Customer agrees to pay the Hire Charges in accordance with this Contract, which shall be paid by BACS, Faster Payment or CHAPS to such bank account as Maxispace may nominate in writing to the Customer. Hire Charges are payable monthly in arrears and time of payment of the Hire Charges is of the essence of this Contract.

**8.3** Maxispace reserves the right to increase the Hire Charges if at any time prior to Installation the cost to Maxispace of hiring the Unit(s) to the Customer increases. In such circumstances, Maxispace may give the Customer not less than 30 days written notice of any such increase and the Hire Charges shall thereafter be at such higher rate for the remainder of the Contract Term. If such increase is not acceptable to the Customer, it may, within 7 days of such notice being received or deemed to have been received in accordance with clause 10, terminate the Contract by giving 21 days written notice to Maxispace.

**8.4** If payment is not made when due Maxispace shall be entitled to charge interest on the overdue amount at 4% above the base rate from time to time of Maxispace's bank. The Customer shall also be liable to pay any charges incurred by Maxispace in the recovery of the overdue amount or the Unit(s). These remedies shall be without prejudice to any other rights Maxispace may have.

**8.5** All Hire Charges, Installation Charges and Maintenance Charges must be paid on the due date for payment, as set out in the Order Confirmation or relevant invoice, without deduction or set off for any reason whatsoever.

**8.6** Where Installation is completed during the course of a calendar month, Maxispace may invoice Hire Charges for the part of the month from Installation until the end of the calendar month, with subsequent Hire Charges becoming payable and liable for invoice from the start of the next calendar month.

## **9. Conditions of Sale**

### **Terms for sale**

**9.1** These Conditions govern the hire and sale of any Unit(s) from Maxispace to the Customer. However, this clause 9 applies specifically to the sale of any Unit(s) to a Customer and therefore the provisions of this clause 9 shall override any conflicting terms contained in these Conditions, or which the Customer otherwise seeks to impose.

**9.2** The legal and beneficial ownership of the Unit(s) shall at all times remain exclusively with Maxispace and the Customer shall not acquire any rights of ownership in the Unit(s) until all monies due to Maxispace under the Contract are paid in full.

### **Payment**

**9.3** Time for payment is of the essence. Unless otherwise agreed by Maxispace or detailed in the Order Confirmation, payment of the Purchase Price shall be due on or before the Delivery Date and if payment is not received by the Delivery Date, Maxispace shall be entitled, without notice to the Customer (even if the Customer has a contract with a third party), to:

1.
  - a. terminate any outstanding order or quotation;
  - b. withhold and/or suspend supply of the Unit(s);
  - c. reduce the Customer's credit limit;
  - d. claim damages for any Losses incurred by Maxispace; or

e. cancel the Contract.

**9.4** Maxispace shall be entitled to charge the Customer interest on the amount unpaid at the rate of 4% above HSBC Bank Plc base rate until full payment is made in cleared funds.

**9.5** The Customer will indemnify and keep indemnified Maxispace in respect of all costs incurred by Maxispace in recovering payment of the Purchase Price, including all legal costs. The Customer will also indemnify and keep indemnified Maxispace in respect of all bank charges incurred by Maxispace for returned cheques presented by the Customer.

**9.6** The Customer shall make all payments due under the Contract without any deduction, withholding, set off or counterclaim.

**9.7** Maxispace reserves the right to set off or deduct any amounts due from Maxispace under any other arrangement with the Customer against any monies due to Maxispace under the Contract.

**9.8** The Purchase Price shall be subject to VAT and shall be correct at the time of issue to the Customer in the Order Confirmation. The Purchase Price may be subject to currency fluctuations and necessary adjustments will be made on all quotes.

**9.9** The Deposit specified in the Order Confirmation is due for payment in cleared funds on the date set out in the Order Confirmation, in full without deduction or set off. Maxispace shall not be liable to deliver or install the Unit until the Deposit has been received from the Customer.

**Insurance, title and risk**

**9.10** Although risk in the Unit(s) to be purchased passes to the Customer on delivery, legal title in such Unit(s) shall not pass to the Customer until Maxispace has received in cleared funds the full price payable for such Unit(s) supplied by Maxispace to the Customer for which payment is then due.

**9.11** Until legal title passes, the Customer shall keep the Unit(s) properly protected, insured and stored separately from any other Unit(s) (whether or not supplied by Maxispace). The Customer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Unit(s). Until that time the Customer is entitled to resell or use the Unit(s) in the ordinary course of its business but shall account to Maxispace for the proceeds of sale and pending payment shall hold such proceeds on trust for Maxispace absolutely.

**9.12** The Customer's right to resell or use the Unit(s) shall terminate automatically on the occurrence of any event set out in condition 12 and/or if any sum owed to Maxispace by the Customer is not paid when due.

**9.13** Maxispace reserves the right at any time before title in the Unit(s) has passed to the Customer to require the Customer to deliver up the Unit(s) if any of the events specified in condition 12 occurs.

**Delivery**

**9.14** The provisions of clause 4 will apply in relation to delivery and collection of the Unit(s). The Customer acknowledges that delivery lead times are subject to change due to availability of the Unit(s) and manufacturing issues and that Maxispace has no control over any change and shall have no liability to the Customer in respect of this.

**9.15** If for any reason the Customer does not accept delivery of the Unit(s) when they are ready for delivery or Maxispace or its contractor is unable to deliver the Unit(s) due to the Customer's

fault then the Unit(s) will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by Maxispace's negligence) and Maxispace may:

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

**9.16** Maxispace reserves the right to deliver in instalments and any failure to deliver one instalment will not entitle the Customer to terminate the Contract.

**9.17** Claims for damaged Unit(s) must be made in writing to Maxispace within 24 hours of receipt of the Unit(s).

### **Returns and refunds**

**9.18** Maxispace may from time to time at its sole option and discretion accept the return of non-faulty Unit(s) on separate rates, terms and conditions, to be agreed with the Customer in advance of any such return. Maxispace may also, at its sole discretion, agree to buy back Unit(s) previously supplied to the Customer at the amount agreed between the parties at the time but shall be under no obligation to do so.

**9.19** If Maxispace establishes to its reasonable satisfaction that there is a material defect relating to the Unit(s) or there is some other material failure by Maxispace in relation to the conformity of the Unit(s) with the Contract, then Maxispace shall at its sole discretion and within a reasonable time:

- a. replace such Unit(s) with Unit(s) which are in all respects in accordance with the Contract; or
- b. repair such Unit(s) to ensure that, once repaired, the Unit(s) conform(s) with the Contract; or
- c. issue a credit note to the Customer in respect of the whole or part of the Purchase Price of such Unit(s) as appropriate having taken back such Unit(s), subject, in every case, to the remaining provisions of this Condition provided that the liability of Maxispace under this clause shall in no event exceed the Purchase Price of such Unit(s) and performance of any one of the above options shall constitute an entire discharge of Maxispace's liability under this clause.

**9.20** Clause 9.19 shall not apply unless the Customer:

- a. notifies Maxispace of the alleged defect immediately when the Customer discovers or ought to have discovered the defect;
- b. allows Maxispace to collect the relevant Unit(s);
- c. complies with any reasonable request or instruction from Maxispace; and
- d. allows Maxispace a reasonable opportunity to inspect the relevant Unit(s).

**9.21** If Maxispace elects to replace the Unit(s) pursuant to clause 9.19, Maxispace shall deliver the replacement Unit(s) to the Customer at Maxispace's own expense at the address to which the defective Unit(s) was/were delivered and the legal title to the defective Unit(s) which is/are being replaced shall (if it has vested in the Customer) vest in Maxispace.

**9.22** Maxispace shall be under no liability under clause 9.19:

- a. in respect of any defect arising from wilful damage, negligence, abnormal storage conditions, failure to follow Maxispace's or the manufacturer's instructions (whether oral or in writing);
- b. if the Customer alters or repairs the Unit(s) without Maxispace's written consent;
- c. if the Purchase Price has not been paid by the due date for payment;

- d. in respect of any type of defect or damage specifically excluded by Maxispace by notice in writing; or
- e. if the Customer makes any further use of the Unit(s) after giving notice in accordance with clause 9.19.

**9.23** Subject to Condition 9.24 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 Unit(s) Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

### **Quality**

**9.24** Notwithstanding Condition 9.23 above, Maxispace warrants that, on delivery, the Unit(s) shall:

- a. conform in all material respect with their description; and
- b. be free from material defects in design, material and workmanship but shall otherwise be sold as seen, which the Customer accepts.
- c. Where the Unit(s) supplied by Maxispace under a Contract with the Customer are sold with a manufacturer's guarantee and/or any warranty only, Maxispace 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 Unit(s) transfers to the Customer in accordance with clause 14.9 above. All warranty and guarantee details relating to the Unit(s) will be included in the Order Confirmation.

**9.25** The Customer should satisfy itself that the persons responsible for the use of any Unit(s) supplied by Maxispace have received all the information required on health and safety and Maxispace shall not be liable to the Customer in any civil proceedings brought by the Customer against Maxispace in respect of a breach of the user instructions or any applicable health and safety legislation or regulations in force from time to time.

**9.26** The Customer shall keep Maxispace properly informed of all complaints concerning the Unit(s) and shall comply with any directions of Maxispace in any issues, proceedings or negotiations relating to such complaint. In the event of any recall of the Unit(s) by Maxispace, the Customer shall co-operate fully and promptly with any steps taken by Maxispace under clause 9.27 below.

**9.27** Maxispace may at its discretion recall any Unit(s) already sold by Maxispace to the Customer, (whether for a refund or credit or for replacement of the Unit(s) which shall in each case be undertaken by Maxispace) and/or issue any written or other notification to the Customer about the manner of use of any Unit(s) already sold by Maxispace to the Customer.

**9.28** The Customer agrees to give all reasonable assistance to Maxispace or the manufacturer in resisting any claim which may arise under any recall of product by Maxispace or the manufacturer of such product.

**9.29** The Customer should check any details and information they wish to rely on in relation to the Unit(s) with Maxispace at the time of purchase. Maxispace 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 online or print publications.

**9.30** Unless expressly stated in the Specification (and priced accordingly), the Purchase Price is quoted on the basis that the Units(s), or components used in the Unit(s), and in any fixtures, fittings or other products incorporated as part of the supply may have been subject to prior use. Where the Customer requires the Unit(s) and associated products to be supplied on an entirely

new basis, it is the Customer's responsibility to ensure that the Specification states this, and this will be reflected in the Purchase Price quoted by Maxispace and payable by the Customer.

## 10. Limitation of Liability

**10.1** This clause sets out the entire financial liability of Maxispace (including any liability for the acts or omissions of its respective employees, agents and subcontractors) to the Customer in respect of:

1. any breach of this agreement;
2. any use made or occupation of the Unit(s) by the Customer; and
3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

**10.2** Nothing in this agreement shall limit or exclude the liability of either party for:

1.
  1. death or personal injury resulting from negligence; or
  2. fraud or fraudulent misrepresentation; or
  3. breach of the terms implied by section 12 of the Sale of Unit(s) Act 1979; or
  4. breach of section 2 of the Consumer Protection Act 1987; or
  5. the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.

**10.3** Without prejudice to clause 10.2, Maxispace shall not be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

- **10.3.1** loss of profit; or
- **10.3.2** loss of goodwill; or
- **10.3.3** loss of business; or
- **10.3.4** loss of business opportunity; or
- **10.3.5** loss of anticipated saving; or
- **10.3.6** loss or corruption of data or information; or
- **10.3.7** special, indirect or consequential damage or loss suffered by the Customer that arises under or in connection with this agreement.

**10.4** Without prejudice to clause 10.2 or clause 10.3, Maxispace' total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to an amount equal to the lesser of one year's Hire Charges, 10% of the Purchase Price, or £50,000.

## 11. Termination

**11.1** If the Customer:

- a.
  - a. fails to pay any Deposit or any Hire Charges or other sums due and payable under this Contract in full by the due date; or
  - b. being a Company:
    - i. has a petition presented for its winding up; or
    - ii. passes a resolution for voluntary winding up; or



- iii. enters into a voluntary arrangement with its creditors; or
- iv. becomes subject to an administration order; or
- v. has a receiver appointed of all or any of its assets; or
- c. being an individual or firm:
  - i. becomes bankrupt or insolvent; or
  - ii. enters into voluntary arrangements with his creditors; or
  - iii. commits a serious breach of this Contract (and in case of such breach being remediable (other than failure by the Customer to pay the Hire Charges or Purchase Price), fails to remedy it within 7 days after receiving written notice to do so);
  - iv. then, in any such case, Maxispace shall be entitled to treat this Contract as being at an end and shall not be obliged to deliver or install the Unit(s) or may require the recovery of the Unit(s) without liability to the Customer.

**11.2** If this Contract is terminated prior to the expiry of the Contract Term, then the Customer shall be liable to pay the entire balance of the Hire Charges for the unexpired portion of the Contract Term.

**11.3** Upon termination, the Unit(s) will be inspected by Maxispace and any charges for damages or repairs excluding fair wear and tear will be chargeable to the Customer and payable within 30 days of the date of Maxispace's invoice for such damage or repairs.

## 12. Data Protection

**12.1** Both parties agree to comply with all applicable requirements of the UK Data Protection Legislation.

**12.2** Maxispace monitors and records all telephone calls for the following purposes:

- a. training;
- b. quality and control; and
- c. to confirm verbal instructions.

**12.3** Maxispace has and maintains a privacy policy which can be viewed at [maxispace.com](https://www.maxispace.com)

## 13. Confidentiality

**13.1** Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 13.2.

**13.2** Each party may disclose the other party's confidential information:

- a. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 13; and
- b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**13.3** Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

**13.4** All materials, equipment and tools, drawings, specifications and data supplied by Maxispace to the Customer shall, at all times, be and remain the exclusive property of

Maxispace, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Maxispace, and shall not be disposed of or used other than in accordance with Maxispace's written instructions or authorisation.

## **14. Force majeure and Brexit**

**14.1** Maxispace shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

**14.2** If the period of delay or non-performance continues for more than 3 weeks, Maxispace may terminate the Contract immediately by giving written notice to the Customer.

**14.3** Maxispace shall not be held responsible nor assume any responsibility for

- a. any delay to the delivery of the Units or Services;
- b. any inability to provide Units under the Contract;
- c. any modifications of or interruptions to the Services; or
- d. any other adverse impact experienced or suffered by the Customer in connection with the Contract,

or any consequences arising therefrom arising out of or in connection with a Brexit Event and the Customer hereby agrees and acknowledges that they shall bear all associated costs and risks.

## **15. Assignment**

**15.1** Maxispace 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, and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

**15.2** 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 Maxispace.

**15.3** Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

## **16. Variation**

**16.1** Maxispace may, from time to time and without notice, make changes to the Unit(s) in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the Hire Charges for the Unit(s).

**16.2** Subject to clause 16.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## **17. Waiver**

**17.1** A waiver of any right under the Contract or law 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.

**17.2** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## **18. Severance**

**18.1** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**18.2** If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **19. Third party rights**

No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

## **20. No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

## **21. Notices**

- a. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - i. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
  - ii. sent by email to Maxispace at [sales@maxispace.com](mailto:sales@maxispace.com).
- b. Any notice or communication shall be deemed to have been received:
  - i. if delivered by hand, on signature of a delivery receipt;
  - ii. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
  - iii. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause

21(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- c. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **22. Entire agreement.**

**22.1** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**22.2** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **23. Governing law and jurisdiction**

**23.1** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**23.2** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.