

# Terms & Conditions of Hire

## 1. INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

the Company:ETS Portsmouth Limited trading as ETS Cable Components;  
the Contract:any contract between the Company and the Hirer for the hire of Tools;  
Tools:any tools agreed in the Contract to be hired by the Hirer from the Company (including any part or parts of them);

Hirer: the person, firm or company who hires the Tools from the Company;

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions the headings will not affect the construction of these Conditions.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4, these Conditions are the only conditions upon which the Company is prepared to deal with the Hirer and they shall govern the Contract to the entire exclusion of all other terms or conditions (including any terms or conditions which the Hirer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Hirer's confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 The Hirer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.4 These Conditions apply to all the Company's hiring activities and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised Company signatory.

## 3. DURATION

3.1 The period of hire shall commence on the date on which the Tools are delivered to the Hirer. The period of hire shall end on the date on which the Tools are given an off hire number by the Company ("the Off Hire Number"). Tools will be deemed to be on hire until an "Off Hire Number" is allocated. Once an Off Hire Number is allocated, the Tools will be deemed to be no longer on hire ("Off Hire").

3.2 Any order number quoted by the Hirer is assumed to be for the duration of the whole hire period.

3.3 An Off Hire Number shall be allocated by the Company's sales team by telephone, email or fax, and will be quoted to

confirm the end of the hire period. The Off Hire Number must be recorded by the Hirer.

3.4 Following the allocation of an Off Hire Number, collection of the Tools will be made in a timely manner. If, through no fault of the Company, Tools are not available for collection, the Company reserves the right to return the Tools to chargeable hire until such time as the Tools become available for collection.

## 4. PAYMENT OF HIRE RENT

4.1 Hire charges will be calculated from delivery date, based on a weekly rate, until such time as the Tool is given an Off Hire Number. The date following delivery and the date of Off Hire shall be counted as whole days for this purpose.

4.2 Minimum hire charges are published and available upon request. Weekends and Bank Holidays are charged as normal working days.

4.3 Hire charges will be payable by the Hirer, the first such payment to be made within 30 days of invoice date.

4.4 Time for payment shall be of the essence.

4.5 No payment shall be deemed to have been received until the Company has received cleared funds.

4.6 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

4.7 The Hirer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Hirer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Hirer.

4.8 If the Hirer fails to pay the Company any sum due pursuant to the Contract the Hirer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Lloyds TSB Bank, accruing on a daily basis until payment is made, whether before or after any judgement. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 5. DAMAGE TO TOOLS

5.1 All Tools are inspected and tested upon return to the Company. Any damages to the Tools found on return will be charged to the Hirer for at full replacement cost.

5.2 Any Tools deemed to be too badly damaged to be repaired will be written off; a new equivalent Tool will be purchased and the cost for such Tool shall be charged to the Hirer at full replacement cost.

5.3 Should any Tools be lost or stolen whilst in the care of the Hirer, the Company reserves the right to charge the Hirer for the replacement Tools (including die sets/accessories) at the full replacement cost,

including all hire charges incurred up to the date of reported loss to the Company. The Hirer is responsible for the secure storage of all Tools from delivery, until safe return to the Company's transport or third party carrier.

5.4 The Hirer shall report any defects to or malfunction in the Tools within 48 hours of delivery and shall, if so requested by the Company, return the Tools to the delivery point for inspection by the Company. If the Company agrees in its absolute discretion that the Tools are not functioning properly, it shall use all reasonable endeavours (but shall not be bound) to provide a suitable replacement item or items from the stock of the Company, and shall credit the Hirer with such an amount not exceeding 2 days' hire rent as it shall in its absolute discretion consider appropriate.

5.5 Subject only to the above, the Company accepts no responsibility for any loss, damage, costs, claims or expenses suffered or incurred by the Hirer or by any third person (including the Hirer's servants or agents), except that the Company does not by this exclude its liability for death or personal injury arising out of the negligence of the Company, its servants or agents.

## 6. USE

6.1 The Tools shall be under the control of the Hirer at all times from delivery until collection and the Hirer shall ensure that Tools are used safely and without risk to health, are used by competent and duly licensed operators as the case may be, and are not used for any purpose for which they are not designed or reasonably suitable.

6.2 Compression crimpers shall never be put under pressure unless the correct die set, terminal and conductor combination is adhered to.

6.3 All hydraulic hoses should be inspected for all damages and tears prior to each use as these can be easily damaged either on site or in transit.

6.4 Die sets must be specified at time of order, sizes will only be sent that have been requested by the Hirer. Die sets are inspected upon return by the Company and any damages found will be charged for in full.

## 7. INDEMNITY

7.1 The Hirer shall be responsible for and shall indemnify the Company against all loss or damage caused to or by the Tools from whatever cause arising.

## 8. INSURANCE

8.1 The Hirer shall keep the Tools insured against loss or damage and third party risks and may be required to produce evidence of such insurance to the Company, who shall be entitled to withhold delivery until such production.

## 7. NO SALE ETC.

7.1 The Hirer shall not move the Tools from the location specified on ordering without first obtaining the Company's written consent (which may be withheld or made subject to such conditions as the

Company in its absolute discretion shall decide). The Hirer shall keep the Tools in its sole possession and shall not lend the Tools or subcontract them to any person or otherwise part with possession of them in any way without first obtaining the Company's written consent. The Hirer acknowledges that the Tools remain the property of the Company at all times and must not in any circumstances be sold or used as security. The Hirer shall not permit any lien to be created on the Tools or pledge the Company's credit for repairs to them.

## 8. REPAIRS

8.1 The Hirer must not repair or attempt to repair the Tools in the event of damage or breakdown but must at once notify the Company.

8.2 If the damage or breakdown has been caused by the fault, carelessness or negligence of the Hirer or by misuse of the Tools, the repair will be at the expense of the Hirer.

8.3 In any case other than under clause 8.2 above the repair will be at the expense of the Company.

8.4 The Company may substitute other Tools of a similar type or condition in lieu of repairing the Tools without relieving the Hirer from responsibility for the cost of repair under clause 8.2 and without extending the period of hire.

8.5 Nothing in this clause shall affect or diminish the liability of the Hirer for any breach of this agreement or render the Company liable to the Hirer for any resultant or consequential loss, damage or inconvenience.

## 9. TERMINATION

9.1 This agreement and the hiring constituted by it shall without notice but at the option of the Company end, and the Hirer shall be obliged to return the Tools to the Company's immediately, in any of the following circumstances:  
9.1.1 a default by the Hirer in the payment of any money due under this agreement for a period of 7 days;  
9.1.2 a breach by the Hirer of any of the provisions of this agreement other than those relating to the payment of money;

9.1.3 the Hirer presenting or allowing to be presented an application for an interim order or a petition for a bankruptcy order within the meaning of the Insolvency Act 1986 or allowing the levy of any distress or execution against the Hirer;  
9.1.4 the Hirer entering into or attempting to enter into a composition with creditors or (in the case of a limited company) going into liquidation except a voluntary liquidation for the purpose of amalgamation or reconstruction on terms previously approved by the Company in writing;  
9.1.5 a receiver or administrator being appointed in respect of the Hirer's assets or any of them, or a meeting, whether formal or informal, being called of the Hirer's creditors or any of them.  
9.2 The Hirer grants the Company, its agents and employees an irrevocable licence at any time to enter any

premises where the Tools are or may be stored in order to inspect them, or, where the Hirer's right to hire the Tools has terminated, to recover them.

## 10. DELIVERY

10.1 The Company shall endeavour to deliver as many consignments of Tools as possible on its own transport for which there is no charge. The Company reserves the right, however, to charge for all third party delivered consignments and collections, timed deliveries, special arrangements and waiting time if incurred by the Company.

## 11. LIMITATION OF LIABILITY

11.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Hirer in respect of:

11.1.1 any breach of these Conditions; and  
11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with these Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

11.4 Subject to conditions 11.2 and 11.3:

11.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the contract value; and  
11.4.2 the Company shall not be liable to the Hirer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 12. CONFIDENTIALITY

12.1 The Hirer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Hirer by the Company or its agents and any other confidential information concerning the Company's business or its products which the Hirer may obtain and the Hirer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Hirer's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Hirer.

## 13. ASSIGNMENT

13.1 The Hirer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

3.2 The Company may assign the Contract or any part of it to any person, firm or company.

## 14. FORCE MAJEURE

14.1 The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Tools ordered or hired by the Hirer if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## 15. GENERAL

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by the Company of any breach of, or any provision of the Contract by the Hirer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

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

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