

**National Tool Hire Limited**  
**Terms and Conditions**

**1. Interpretation**

1.1 In these conditions the following words have the following meanings:

“Cleaning Charge”	means £30 per hour or such other charges as rendered by NTH acting reasonably.
“Consumer”	means an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession.
“Contract”	means a contract which incorporates the Contract Details and these terms and conditions, made between the Customer and NTH for the hire, and/or sale of Goods.
“Contract Details”	means the specific details of the Contract agreed by NTH in relation to the Customer’s hire and/or sale of Goods and referred to in the e-mail confirmation sent from NTH to the Customer.
“Customer”	means the person, firm, company or other organisation hiring Hire Goods or purchasing Sale Goods.
“Deposit”	means any advance payment required by NTH in relation to the Hire Goods which is to be held as security by NTH.
“Digital Content”	means data which is produced and supplied in digital form.
“Force Majeure”	means any event outside a party’s reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events.
“Goods”	means any machine, article, tool, and/or device together with any accessories specified in a Contract which are hired or sold to the Customer.
“Hire Goods”	means any Goods which are hired to the Customer.

“Hire Period”	means the period commencing when the Customer holds the Hire Goods on hire (including Saturdays Sundays and	automatically terminated.
	Bank Holidays) and ending upon the happening of any of the following events:  (i) the physical return of the Hire Goods by the Customer into NTH’s possession; or (ii) the physical repossession or collection of Hire Goods by NTH.	Accordingly, the hire of any Hire Goods is not covered by the Consumer Credit Act 1974. In such
“Liability”	means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities.	
“NTH”	means National Tool Hire Limited whose registered office is at Langtons, 11 <sup>th</sup> Floor, The Plaza, Old Hall Street, Liverpool, L3 9QJ.	
“Rental”	means NTH’s charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period and as set out in the Contract Details.	
“Sale Goods”	means any Goods which are sold to the Customer.	
“Services”	means the services and/or work (if any) to be performed by NTH for the Customer in conjunction with the hire or sale of Goods including any delivery and/or collection service in respect of the Goods.	

**2. Basis of Contract**

2.1 Goods are hired or sold subject to them being available for hire or sale to the Customer at the time required by the Customer. NTH will not be liable for any loss suffered by the Customer as a result of the Goods being unavailable for hire or sale.

2.2 Where hire of the Hire Goods is to a Customer who is an individual, unincorporated entity or a two (2) or three (3) partner business, and the hire would be covered by the Consumer Credit Act 1974, the duration of the Hire Period shall not exceed 3 months, after which time the Contract shall be deemed to have

circumstances, the Customer shall return the Hire Goods to NTH on the final day of the 3 month Hire Period. If the Customer fails to do this then it shall be liable for any financial loss which this causes NTH.

2.3 Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a Consumer. **Where the Customer is acting as a Consumer if any provision which is marked with an asterisk (\*) is determined by the Courts under applicable legislation to have no force or effect and/or is determined unenforceable in whole or in part the Contract shall be deemed not to include such provisions but this shall not effect**

**the enforceability of the remainder of the Contract.** For further information about your statutory rights contact your local authority Trading Standards Department or Citizens Advice Bureau or if based in the Republic of Ireland your local office of the Director of Consumer Affairs or Citizens Information Centre or a solicitor.

### **3. Faulty Goods and/or Services**

**3.1 Where the Customer deals as a Consumer, NTH is under a legal duty to supply Goods, and Services that are in conformity with the contract between the parties. In such circumstances, the Customer has legal rights in relation to Goods that are, for example, faulty or not as described and in relation to Services that are, for example, not carried out with reasonable skill and care, or if the materials used to carry out the Services are faulty or not as described.**

**3.2 Advice about Customers' legal rights where they deal as a Consumer is available from their local Citizens' Advice Bureau, Trading Standards office or a solicitor. Nothing in these conditions will adversely affect these legal rights.**

### **4. Payment**

4.1 The amount of any Deposit, Rental, charges for Sale Goods and/or charges for any Services and/or any sums payable shall be as set out in the Contract Details or if not included in the Contract Details then as shown in NTH's current price list from time to time and must be paid in advance of the Customer hiring the Hire Goods at the time and in the manner agreed.

4.2 At the time of booking we will authorise the total booking charges (equipment hire rate,

delivery/collection charges, fuel, damage waiver, consumables, VAT and any additional charges or deposits) for the duration of your hire against your credit/debit card. We may also choose to accept a deposit in place of payment card authorisation by another valid form of payment, including bank transfer. During and after your hire period we will calculate any additional charges to your hire. The cost of those additional charges

(additional hire period, failed collection/delivery charges,

additional consumables, damage, loss or theft) will be requested automatically with a further authorisation and if such authorisation is not available, we may request another method of settlement. All outstanding charges must be paid for in full at the end of the hire period.

4.3 NTH's prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable.

4.4 Payment by the Customer on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until NTH has received either cash or cleared funds in respect of the full amount outstanding.

4.5 \*If the Customer fails to make any payment in full on the due date NTH may charge the Customer interest (both before and after judgment/decreed) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of NTH's bank whichever is higher. The Customer shall be liable to pay all costs, fees, disbursements and charges including all legal fees and costs reasonably incurred by National Tool Hire Ltd in the recovery of any unpaid invoice(s).

4.6 \*The Customer shall pay all sums due to NTH under this Contract without any setoff, deduction, counterclaim and/or any other withholding of monies.

4.7 NTH may set a reasonable credit limit for the Customer. NTH reserves the right to terminate or suspend the Contract for hire of the Hire Goods and/or the provision of Services if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.

4.8 Cancelled orders will incur a cancellation fee which is equal to the full hire cost unless cancellation cover was taken out at the time of booking.

## 5. **Risk, Ownership and Insurance**

5.1 Risk in the Goods will pass immediately to the Customer when they leave the physical possession or control of NTH's supplier.

5.2 Risk in the Hire Goods will not pass back to NTH from the Customer until the Hire Goods are back in the physical possession of NTH's supplier. This shall apply even if NTH has agreed to cease charging the Rental.

5.3 Ownership of the Hire Goods remains at all times with the owner. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer. Ownership of any Sale Goods remains with NTH or the owner/supplier until all monies payable to NTH by the Customer for the Sale Goods have been paid in full.

5.4 Until ownership in the Sale Goods passes to the Customer, the Customer shall:-

5.4.1 hold the Sale Goods on a fiduciary basis as NTH's bailee

or the owner's bailee, as appropriate in the circumstances;

5.4.2 maintain the Sale Goods in satisfactory condition; and

5.4.3 keep the Sale Goods insured against all risks for their full price from the time they leave the physical possession or control of NTH's supplier.

5.5 The Customer must not deal with the ownership or any interest in the Hire Goods. 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.

5.6 The Customer undertakes and agrees at all times during the terms of the Contract:

5.6.1 to insure and keep insured if so required by NTH, all of the Hire Goods, at its own expense and additional to any Rental, which may at any time be in the Customer's possession, custody or control, with a reputable insurer approved by NTH or an insurer nominated by NTH to its full replacement value against all the risks or damage, theft and/or loss and/or as NTH may specify;

5.6.2 to show NTH on demand the policy document and the most recent receipt for premium;

5.6.3 to perform any obligation required of it under the terms of such insurance;

5.6.4 to do nothing which could invalidate any such insurance;

- 5.6.5 to pay to NTH on demand the proceeds of any insurance claim made in respect thereof, holding the same pending such payment on trust for NTH and/or the owner of the Hire Goods;
- 5.6.6 to not compromise any claim in respect of the Hire Goods and/or any associated insurance without NTH's prior written consent; and
- 5.6.7 not to use the Hire Goods at any other location other than at the location of delivery or such other location as agreed in writing by NTH.
- 5.7 Where the Customer utilises an insurer nominated by NTH, the Customer shall pay in advance a deposit equal to the insurance policy excess (in addition to any premium paid). Such deposit shall be used by NTH in the event of damage to the Hire Goods towards the cost of repair/replacement of the Hire Goods. In the event the value of the damage is greater than the deposit then the whole deposit shall be forfeited and a claim shall be made on any existing valid insurance policy.
- 5.8 The Customer will pay to NTH the replacement cost of any Hire Goods which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to NTH under any policy of insurance taken out in accordance with these conditions.
- 5.9 If the Hire Goods are returned in a damaged or defective state, except where due to reasonable wear and tear, the Customer shall be liable to pay to NTH for the cost of any repairs.
- 5.10 NTH may require the Customer to purchase (upon payment of an additional charge) damage waiver for certain Hire Goods at an additional charge to Rental. Separate terms and conditions shall apply to the terms of purchase of such damage waiver available at the time of purchase by the Customer.
- 5.11 If the Hire Goods are returned in damaged, unclean and/or defective state except where due to fair wear and tear and/or an inherent fault in the Hire Goods, the Customer shall be liable to pay NTH for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire and to pay the Rental, in accordance with the provisions of clause 8.3, until such repairs and/or cleaning have been completed.
- 5.12 In respect of any Hire Goods which are lost, stolen or damaged beyond economic repair during the Hire Period the Customer will:-
- 5.12.1 pay to NTH the new replacement cost for any Hire Goods less than twelve (12) months old from first registration; and/or
- 5.12.2 reimburse NTH for any loss or costs suffered or incurred by NTH for any Hire Goods more than twelve (12) months old from first registration, less the amount paid to NTH under any policy of insurance and/or Deposit in respect of the Hire Goods.
- 5.13 The Customer shall remain liable to pay the Rental for the Hire Goods up to and including the date it notifies NTH that the

Hire Goods have been lost, stolen and/or damaged beyond economic repair.

5.14 In addition to the obligation in clause 5.13 to pay the Rental, from the date the Customer notifies NTH that the Hire Goods have been lost, stolen and/or damaged beyond economic repair until the date the Customer makes a payment to NTH for the replacement of the Hire Goods in accordance with clause 5.12 (“Lost Rental Period ” ) , the Customer shall pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages being equal to two thirds of the Rental that would have applied for such Hire Goods during the Lost Rental Period. NTH shall use its reasonable commercial endeavours to purchase replacements for such Hire Goods as quickly as possible once it has received payment from the Customer under clause 5.12 above.

## **6. Delivery, Collection and Services**

6.1 It is the responsibility of the Customer to collect the Goods, and, in the case of Hire Goods, return them to the place originally collected from or as otherwise directed by NTH at the end of the Hire Period. If NTH agrees to deliver Goods to and/or collect the Hire Goods from the Customer it will

do so at its standard delivery cost and such delivery and/or collection will form part of the Services. Prior to the Customer being given access to Hire Goods, the Customer must provide proof of identification to the satisfaction of NTH. Should NTH consider satisfactory proof of identification has not been provided by the Customer then NTH may not allow access to the Hire Goods and terminate the Contract with immediate effect and apply a reasonable charge. NTH shall not be liable for any losses sustained by the Customer due to such Contract termination. The Customer shall request details of the proof of identification

required by NTH prior to the expected commencement of the Hire Period.

6.2 NTH cannot guarantee that any Hire Period will commence or end at a particular time of day. It is therefore recommended that if a Customer requires Hire Goods to be on site on a particular day by a particular time then the Hire Period should be requested to commence the day before that particular day.

6.3 Where NTH have agreed to deliver/collect the Hire Goods and no Customer contact is available at the time of the delivery/collection of the Hire Goods then NTH will attempt to make contact by telephone with the Customer. Should the Customer not arrive within 15 minutes of such attempted contact (regardless of if contact was successful or not) and take delivery of or allow collection of the Hire Goods then, without prejudice to NTH’s other rights and remedies, delivery/collection will be postponed, to another time/date as specified by NTH. Without prejudice to clause 6.7 the Customer shall be liable to pay immediately to NTH a failed delivery/collection fee of 150% of the original delivery/collection charge for the first and every subsequent failed delivery or collection. In the event that there is a failed collection attempt by NTH then NTH may extend the Hire Period to include up to and including the date of collection and the Customer shall be liable for payment of the Rental for such extended period in addition to the original Rental.

6.4 If NTH agrees to collect the Hire Goods from the Customer at the end of the Hire Period the Customer must give NTH reasonable notice which shall include at least five (5) working days’ notice from the end of the Hire Period. The Customer shall remain responsible and liable for any loss, damage

or theft to the Hire Goods until the Hire Goods are collected by NTH unless NTH fails to collect the Hire Goods within 5 working days of the Customer notifying NTH that the Hire Goods are ready for collection whereupon NTH shall be liable for any loss, damage or theft thereafter.

6.5 Where NTH provides Services, the persons performing the Services are servants of the Customer and once the Customer instructs such person they are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice except to the extent that the persons performing the Services are found to be negligent by a court with jurisdiction to make such finding pursuant to clause 15.10.

6.6 The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to utilities for NTH's employees, sub- contractors and/or agents to allow them to carry out the Services. The Customer will ensure that the site where the Services are to be performed is, where necessary,

cleared and prepared before the Services are due to commence.

6.7 If any Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay NTH's additional standard charges from time to time for such delay, postponement and/or cancellation except where the Customer is acting as a Consumer and the delay is due to a Force Majeure event. **7. Care of Hire Goods** 7.1

The Customer shall:

7.1.1 not remove any labels from and/or interfere with the Hire Goods, their working mechanisms or any other parts of them and shall take reasonable care of the Hire Goods and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer;

7.1.2 notify NTH immediately after any breakdown, loss and/or damage to the Hire Goods;

7.1.3 take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;

7.1.4 notify NTH of any change of its address and upon NTH's request provide details of the location of the Hire Goods;

7.1.5 permit NTH at all reasonable times and upon reasonable notice to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;

7.1.6 keep the Hire Goods at all times in its possession and control and not to remove the Hire Goods from the country where the Customer is located and/or the country where NTH is located without the prior written consent of NTH;

7.1.7 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hire Goods required by any legislation, best practice and/or operating

instructions except to the extent that NTH has agreed to provide them as part of any Services;

7.1.8 not do or omit to do anything which the Customer has been notified will or may be deemed to invalidate any policy of insurance related to the Hire Goods;

7.1.9 not continue to use Hire Goods where they have been damaged and will notify NTH immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person; and

7.1.10 where the Hire Goods require fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Hire Goods are properly installed by a qualified and competent person. From 1st April 2022, customers must not use red diesel to fuel hired equipment during a hire period even if they work in a permitted industry. Misfuelling of hired equipment will incur a tank drainage and fuel disposal charge.

7.1.11 ensure that any employees, agents or contractors that operate the Hire Goods are, if applicable, adequately and sufficiently qualified and trained to operate the Hire Goods in accordance with all current and applicable legislation.

7.2 The Hire Goods must be returned by the Customer in good working order and condition (fair wear and tear excepted) and in a clean condition together with all insurance policies, licences, registration and other documents relating to the Hire Goods. If in the reasonable opinion of NTH the Hire Goods are not returned in a clean condition then NTH may charge the Customer a Cleaning Charge. The Cleaning Charge shall be payable within 7 days of the NTH Invoice.

## **8. Breakdown**

8.1 Allowance may be made in relation to the Rental to the Customer for any non-use of the Hire Goods due to breakdown caused by the development of an inherent fault and/or fair wear and tear on condition that the Customer informs NTH promptly of the breakdown and NTH is unable to repair or replace the Hire Goods within a reasonable time. Any allowance claimed will only be considered from the time and date at which notification is received by NTH. NTH's liability due to breakdown shall be limited to the Customer's wasted Rental in relation to the specific Hired Goods only that have broken down.

8.2 The Customer shall be responsible for all expenses, loss (including loss of Rental) and/or damage suffered by NTH arising from any breakdown of the Hire Goods due to the Customer's negligence, misdirection and/or misuse of the Hire Goods.

8.3 NTH will at its own cost carry out all routine maintenance and repairs to the

Hire Goods during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Hire Goods. The Customer will be responsible for the cost of all repairs necessary to Hire Goods during the Hire Period which arise otherwise than as a result of fair wear and

tear, an inherent fault and/or the negligence of NTH while carrying out routine maintenance and/or repairs.

decision to cancel the Contract.

8.4 The Customer must not repair or attempt to repair the Hire Goods unless authorised to do so in writing by NTH.

## **9. Statutory Cancellation Right For Consumers**

9.1 The provisions of this clause 9 only apply to Customers who are a Consumer for the purpose of any hire or purchase from NTH.

9.2 Subject to clauses 9.4 and 9.5, in the case of all Contracts for Sale Goods the Customer shall, in accordance with its rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, have the right to cancel the Contract by emailing NTH at [help@nationaltoolhire.ltd](mailto:help@nationaltoolhire.ltd) without incurring any charge or Liability within 14 days of the day following the date on which the Goods come into the physical possession of the Customer.

9.3 Where a Customer exercises its right to cancel under clause 9.2 and has made payments in advance for Goods and/or Services that have not been provided to it, then NTH will refund these amounts to the Customer:

9.3.1 within 14 days of receipt of the Goods which have been returned by the Customer; or

9.3.2 (if earlier) within 14 days after the day the Customer provides evidence that they have returned the Goods; or

9.3.3 if no Goods have been provided by NTH, 14 days after the day on which NTH is informed of the Customer's

9.4 Where the Customer deals as a Consumer and requests in writing that NTH begins provision of the Services within the cancellation period set out in clause 9.2, then the Customer's right to cancel the Contract without incurring any charge or Liability will expire once NTH has completed the provision of the Services. If the Customer cancels the Contract once NTH has begun to provide the Services it shall be liable for all costs reasonably incurred by NTH in providing the

Services up to the point NTH is informed of the Customer's decision to cancel the Contract.

9.5 Where the Contract is with a Consumer and:

9.5.1 is for the supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities; and

9.5.2 provides for a specific date or period of performance, the Consumer will not have a right to cancel the Contract without incurring any charge or Liability to NTH.

9.6 Where a Customer cancels the Contract under this clause 9, it shall return any Goods which NTH has provided to it at its own cost, unless otherwise expressly agreed in writing.

## **10. Termination by Notice**

10.1 If the Hire Period has a fixed duration, then subject to the provisions of clause 11 neither the Customer nor NTH shall be

entitled to terminate the Contract before the expiry of that fixed period unless agreed with the other party.

10.2 If the Hire Period does not have a fixed duration either of the Customer or NTH is entitled to terminate the Contract after commencement of the Hire Period upon giving to the other party at least one clear days' notice of termination (for example, if notice of termination is given on Monday then the Contract will terminate at midnight on Tuesday and any Rental would be due for the Monday and Tuesday but not the Wednesday).

10.3 The rights set out in this clause 11 are in addition to any rights the Customer may have under clause 9 (and any other legal rights).

10.4 Payments made by the Customer for Sale Goods including consumables, fuel, damage waiver, insurance, deposit intended to cover a Hire Period which has been cancelled may be refunded to the Customer by NTH except where:

10.4.1 NTH has paid to a third party an insurance premium;

10.4.2 Specialist transport or permits costs for which NTH liable; or

10.4.3 Any such Sale Goods are returned used or in the opinion of NTH are not in resaleable condition.

## **11. Termination for Default**

11.1 If the Customer:-

11.1.1 fails to make any payment to NTH when due;

11.1.2 breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14

days of receiving notice requiring the breach to be remedied;

11.1.3 persistently breaches the terms of the Contract;

11.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

11.1.5 pledges, charges or creates any form of security over any Hire Goods or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any property of the Customer, has a bankruptcy petition/petition for sequestration presented against it or the Customer takes or suffers any similar action in any jurisdiction;

11.1.6 being a company, ceases or threatens to cease to carry on business, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of its assets, any attachment order/arrestment is made against the Customer, any distress/diligence, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;

11.1.7 appears to NTH (acting reasonably) due to the Customer's credit rating to be financially incapable of meeting

its obligations under the Contract; and/or

11.1.8 appears to NTH (acting reasonably) to be about to suffer any of the above events; then NTH shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 11.2 below.

11.2 If any of the events set out in clause 11.1 above occurs in relation to the Customer then:-

11.2.1 except where the Customer is acting as a Consumer NTH may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Goods owned or hired by NTH may be and repossess and/or take possession of any Goods;

11.2.2 NTH may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with the Customer;

11.2.3 NTH may immediately cancel, terminate and/or suspend without Liability to the Customer the Contract and/or any other contract with the Customer; and/or

11.2.4 \*all monies owed by the Customer to NTH shall immediately become due and payable.

11.3 Any repossession of the Goods shall not affect NTH's right to recover from the Customer any monies due under the

Contract and/or any damages in respect of any breach which occurred prior to repossession of the Goods.

11.4 Upon termination of the Contract the Customer shall immediately:

11.4.1 return the Goods to NTH or, as requested by NTH, make the Goods available for collection by NTH or its authorised representatives (the Customer granting or procuring for NTH or its authorised representative the right to enter the site without trespass); and

11.4.2 pay to NTH all arrears for Rentals, Charges for any Services, monies for any Sale Goods and/or any other sums payable under the Contract including, but not limited to, the cost of returning the Goods.

11.5 The Customer, when also a **Consumer**, may end the Contract for a reason set out in clauses 11.5.1 to 11.5.5 below by notifying NTH when they wish the Contract to end and the reason why and NTH will then refund the Customer for any Goods or Hire Period which has not been provided where;

11.5.1 NTH has told the Customer about an upcoming change to the Goods and/or Services or this Contract which the Customer does not agree to;

11.5.2 NTH have told the Customer about an error in the price or description of the Goods and/or Services that the Customer has ordered and the Customer does not wish to proceed;

11.5.3 there is a risk that supply of the Goods and/or Services may be significantly delayed because of events outside the Customer's control;

11.5.4 NTH has suspended supply of Goods and/or Services for technical reasons, or notified the Customer it is going to suspend the supply of Goods and/or Services for technical reasons in each case for a period of more than 3 days; or

11.5.5 the Customer has a legal right to end the Contract because of a breach of Contract by NTH.

**12. Limitation of Liability for Loss or Damage Suffered by Customer (Not a Consumer)**

12.1 All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.

12.2 If NTH is found to be liable in respect of any loss or damage to the Customer's property the extent of NTH's Liability

will be limited to the retail cost of replacement of the damaged property.

12.3 Any defective Goods must be returned to NTH's supplier for inspection if requested by NTH before NTH will have any Liability for defective Goods.

12.4 NTH shall have no Liability to the Customer if, without just cause, any monies due in respect of the

Goods and/or the Services have not been paid in full by the due date for payment.

12.5 NTH shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.

12.6 The Customer shall give NTH a reasonable opportunity to remedy any matter for which NTH is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so NTH shall have no Liability to the Customer.

12.7 NTH shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against NTH.

12.8 NTH shall have no Liability to the Customer for any of the following losses (whether direct or indirect):-

12.8.1 consequential losses;

12.8.2 economic and/or other similar losses;

12.8.3 business interruption, loss of business, contracts and/or opportunity including loss of profits and/or damage to

goodwill;

12.8.4 aborted costs or loss from the hiring by the Customer of any tradesperson or contractor; and/or

12.8.5 special damages and indirect losses however so arising.

12.9 NTH's total Liability to the Customer under and/or arising in relation to any Contract shall not exceed 2 times the charges paid by the Customer under the Contract.

12.10 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

12.10.1 Liability for breach of contract;

12.10.2 Liability in tort/delict (including negligence); and

12.10.3 Liability for breach of statutory and/or common law duty; except clause 12.9 above which shall apply once only in respect of all the said types of Liability.

12.11 Nothing in this Contract shall exclude or limit the Liability of NTH for fraud, death or personal injury due to NTH's negligence, nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

### **13. NTH's Responsibility for Loss or Damage Suffered by Customer who is a**

#### **Consumer**

13.1 In the event NTH fail to comply with this Contract, NTH are responsible for loss or damage the Customer suffers that is a foreseeable result of NTH's breaching this

Contract or NTH's failure to use reasonable care and skill but NTH is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made, both NTH and the Customer knew it might happen, for example, if the Customer discussed it with NTH during the sale process.

13.2 NTH does not exclude or limit in any way its liability to the Customer where it would be unlawful to do so including liability for death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors; for fraud or fraudulent misinterpretation; for breach of your legal rights in relation to the Goods including the right to receive Goods which are: as described and match information NTH provided to the Customer and any sample or model seen or examined by the Customer; of satisfactory quality; fit for any particular purpose made known to NTH: for Services supplied with reasonable skill and care.

13.3 NTH are not liable for business losses. NTH only supply the Goods and/or Services to the Customer for domestic and private use. If you use the Goods and/or Services for any commercial, business or re-sale purpose NTH will have no liability to you for any loss of profit, loss of business, business interruptions, or loss of business opportunity.

13.4 Any defective Goods must be returned promptly to NTH's supplier for inspection if requested by NTH before NTH can incur any liability for defective Goods.

13.5 The customer shall give NTH a reasonable opportunity to remedy any matter for which NTH may be liable before the Customer incurs any cost and/or expenses in remedying the matter itself. If the Customer does not do so NTH shall have no Liability to the Customer relating to that matter.

13.6 If NTH are found to be liable in respect of loss or damage to the Customer's property the extent of NTH's Liability will be limited to the cost of making good any damage to the Customer's property.

13.7 Subject to clause 13.2, NTH shall not be liable for any distress or inconvenience caused to the Customer or for any aborted costs or loss arising from engagement by the Customer of any tradesperson or contractor.

#### **14. Data Protection**

14.1 NTH will only use personal information of the Customer as set out in NTH's privacy information available on the internet at [www.nationaltoolhireshops.co.uk/privacy-policy](http://www.nationaltoolhireshops.co.uk/privacy-policy).

#### **15. GENERAL**

15.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of a Contract including clauses 4.1, 4.2, 4.3, 4.4, 4.5, 7, 8, 9.1, 9.3, 12, 13 and 15.5 shall continue in full force and effect. Termination or expiry of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the

date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.2 Each hire of an item of Hire Goods shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Goods.

15.3 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.

15.4 When dealing as a Consumer, if the Customer has any questions or complaints it may contact NTH by telephoning its customer service team on 0151 214 3175 or by e-mail it at [hiredesk@nationaltoolhire.ltd](mailto:hiredesk@nationaltoolhire.ltd).

15.5 \*The Customer agrees to indemnify and keep indemnified NTH against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by NTH and arising from or due to any breach of contract, any tortious/delictual act and/or omission and/or any breach of statutory duty by the Customer.

15.6 In the event NTH do not insist immediately that the Customer does anything it is required to do so under the Contract, or if NTH delays in taking steps against NTH in respect of the Customer's breaching this Contract, that will not mean that the Customer does not have to do those things, and it will not prevent NTH taking steps against the Customer at a later date.

15.7 If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the

affected provision shall be unaffected and shall remain in full force and effect.

15.8 NTH shall have no Liability to the Customer for any delay and/or nonperformance of a Contract to the extent that such delay is due to any Force Majeure events. If NTH is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

15.9 All third party rights are excluded and no third parties shall have any rights to

enforce the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999. This shall not apply to any finance company with whom NTH has an outstanding finance agreement relating to the Hire Goods. Such finance company shall, subject to NTH's consent, have the right to enforce this Contract as if they were NTH.

15.10 This Contract is governed by English Law and either party may bring legal proceedings in respect of the Contract in the English Court.

## **16. Damage Waiver**

16.1 The Damage Waiver does not apply and the Customer will remain fully responsible for damage to Hire Goods if:

16.1.1 damage to Hire Goods was directly or indirectly the result of: misuse or use contrary to instructions; or malice or any deliberate act; or negligence or want of care; or an act or omission by any person who is not the Customer or in the Customer's direct employment; or failure to use and maintain the Hire Goods in accordance with the manufacturer's guidelines,

16.1.2 The Hire Goods are lost or stolen or not returned to the Supplier, 16.1.3 damage is not reported to the Supplier within 48 hours of the

damage occurring or is caused by chemical spills, paint, concrete, masonry (or similar) spillage or overspray,

16.1.4 damage arises from failure to clean and conduct general routine maintenance of the Hire Goods, where cleaning and maintenance is the Customer's responsibility under the terms of the Contract,

16.1.5 damage is the result of a breach by the Customer of any of the terms of the Contract.

16.2 The Damage Waiver is not an insurance for Hired Goods and does not cover loss or theft of the Hire Goods.