

Avery Weigh-Tronix: Conditions of Equipment Hire

1. CONTRACTUAL AGREEMENT

This Agreement governs the hire of the Equipment to the Hirer to the exclusion of all other representations, statements, understandings, negotiations, proposals or agreements unless specifically agreed or notified in writing by an authorised official of the Supplier.

2. DEFINITIONS

2.1. In this Agreement words in the singular include the plural and vice versa unless the context otherwise requires, the following expressions have the following meaning:

'Agreement' – means the contract for the hire of Equipment which shall be deemed to include these Conditions.

'Commencement Date' – means the date specified on the Hire Agreement form on which the Hire Period commences or is scheduled to commence, or if no such date is stated the date of the delivery of the Equipment.

'Conditions' – means these conditions for equipment hire and any documents referred to herein.

'Equipment' – means the equipment specified in the Agreement together with all associated software, drawings, operating instructions and technical manuals supplied by the Supplier and such additions and changes thereto as shall from time to time be agreed in writing between the parties.

'Hazardous Substances' – means any substance in any form whatsoever which is or can in particular circumstances be corrosive, poisonous, radioactive, carcinogenic or in any way whatsoever either dangerous or to pose a risk to health or which is controlled by special regulations or guidelines for its possession or use or which can be considered hazardous to people or property in any other way whatsoever.

'Hire Charges' – means the charges for the hire as notified by the Supplier to the Hirer from time to time in accordance with the Agreement.

'Hire Period' – means the period commencing on the Commencement Date and ending on the latest date of:

I. the latest agreed date for the termination of hire or

II. the date on which the Equipment is returned to the Company's premises or

III. where the Supplier has agreed to collect the equipment, the date the equipment is made ready and available for collection by the Supplier.

'Hirer' – means the person(s), company or firm identified as such on the Hire Agreement and will include any person giving the Supplier reasonable cause to believe he is acting on the Hirer's behalf.

'Location' – means the specific part of the Hirer's premises in which the equipment is installed or is to be installed.

'Maintenance Hours' – means the hours between 8.15 am and 4.30pm each day excluding Saturdays, Sundays and public holidays.

'Supplier' – means ITW Limited, trading as Avery Weigh-Tronix. Our principle place of business for correspondence is Foundry Lane, Smethwick, West Midlands, B66 2LP, England. Our registered office is at Saxon House, 2-4 Victoria Street, Windsor, England, SL4 1EN. Brecknell, Central Weighing, Exactrak, GSE and Railweight are all parts of Avery Weigh-Tronix. Registered in England and Wales under number 559693.

3. SPECIFICATIONS OF EQUIPMENT

3.1 The Supplier will supply, wherever possible, equipment as requested by the Hirer. The Supplier, however, reserves the right to supply any model of Equipment which in the Supplier's opinion meets the Hirer's stated requirements in all material respects.

3.2 The Hirer may, before entering into this Agreement and by prior arrangement with the Supplier, inspect the Equipment but in any event the Hirer is wholly responsible for ensuring that the Equipment is sufficient and suitable for the purpose intended.

4. SUPPLY AND RETURN OF EQUIPMENT

4.1. Delivery

(a) The Hirer is responsible (unless otherwise agreed) for transporting the Equipment to or from the Location, loading and off loading the same upon any transport and for safeguarding and storing any packing materials and cases for returning the Equipment.

(b) The Supplier's packaging materials and cases are chargeable in full to the Hirer if they are not returned with the Equipment at the end of the Hire Period.

4.2 Installation – The Hirer is responsible for providing all necessary site preparation facilities and assistance including but not limited to: suitable access to and possession of the site; proper foundations ready to receive the Equipment as and when delivered; adequate lifting facilities and scaffolding; hire and carriage of test weights; all unskilled labour; masons', joiners', and builders' work; weights and measures stamping fees; provision of customised software; input of date; labeling of keys; suitable guarding and protection for the Equipment from time of delivery; all power supply and interconnecting cabling and wiring; electric power lighting and heating necessary on the site during and after installation; dismantling and removal of Equipment at the end of the hire period; and all other necessary facilities and adequate assistance. Where necessary, skilled labour to set up and calibrate the Equipment and provide operator training is chargeable to the Hirer at the Supplier's applicable hourly rate.

4.3 Return of Equipment On termination of the Hire Period the Equipment shall, at the option of the Supplier either be:

(a) returned by the Hirer at the Hirer's risk and expense, to an appropriate address notified by the Supplier; or

(b) collected by the Supplier

4.4 Right of Search

The Supplier reserves the right to search any vehicles leaving its premises at any time and the Hirer agrees that the Supplier may exercise this right in respect of any transport arranged by the Hirer.

4.5 Supplier Delivering

When the Supplier takes responsibility for delivery the Supplier will repair or at its option, replace free of charge Equipment lost or damaged in transit, providing that the Supplier is given written notification of such loss or damage within three days of delivery, or, in the case of loss, the date when the delivery ought of occurred.

4.6 Delivery Times

(a) All dates quoted or stated for delivery are approximate only, unless specifically described as a fixed date. Any fixed date for despatch or delivery shall be extended by a reasonable period if a delay is caused by instructions or lack of instructions from the Hirer or by industrial dispute or by any cause beyond the Supplier's reasonable control.

(b) If the Supplier fails to despatch or deliver by an agreed fixed date or by an extended date provided by this clause, and if as a result the Hirer shall have suffered loss, the Supplier undertakes to pay for each week or part of a week of delay, liquidated damages at the rate of 0.25% up to a maximum of 2.5% of the weekly rate of Hire Charges for the late delivered items of the Equipment and any other items of the Equipment as cannot in consequence of the delay be used commercially and effectively. Such payment shall be in full settlement of the Supplier's liability for delay.

5. PERIOD OF HIRE

5.1. Failure by the Hirer to return the Equipment at the end of the period of hire or failure by the Hirer to make the Equipment available for collection at the agreed time and place if it is agreed that the Supplier shall collect the Equipment will entitle the Supplier to charge at the same rate as the Hire Charges until the Equipment is returned to the Supplier and should the return of the Equipment be delayed for any reason whatsoever that is not the sole responsibility of the Supplier for a period of one calendar month from the due date then the Supplier shall at any time thereafter at his sole discretion be entitled to invoice and be paid by the Hirer for the full replacement value of new replacement Equipment of the same or equivalent specification.

5.2 Subject to the above, unless a fixed period of hire has been agreed the hire will continue at the end of any minimum period until the end of the Hire Period at the rate of charge shown in the Agreement for further extensions of the hire.

5.3 Nothing above shall affect the Supplier's right to terminate under clause 14 hereof and repossess the Equipment.

6. HIRE CHARGES

6.1. The Hirer is liable to the Supplier for hire charges from the Commencement Date and throughout the Hire Period.

6.2 Hire Charges are as set out in the Agreement. The Hirer agrees to pay the total amount of charges in respect of any minimum period specified notwithstanding the earlier return of any or all of the Equipment to the Company before the end of such minimum period.

6.3 Hire Charges quoted without prior inspection of the Location or without the Hirer's disclosure of special circumstances assume normal site conditions with reasonable access and normal use of Equipment (as reasonably determined by the Supplier). The Supplier reserves the right to make reasonable extra charges where there are adverse site conditions or special use of the Equipment, and such charges shall apply retrospectively from the Commencement Date.

6.4 The Supplier may at any time and by giving not less than two weeks notice in writing, after the rate of Hire Charges payable under this Agreement provided that the rate of Hire Charges may not be altered to take effect during any minimum hire period.

6.5 If the intended or actual use or Location of the Equipment is changed at any time the Supplier reserves the right to increase the Hire Charges and any other charges payable under this Agreement with effect from the actual date of change by an amount which in the Company's reasonable opinion covers additional costs it will incur as a result of the change.

7. CREDIT AND PAYMENT TERMS

7.1. The Supplier reserves the right not to extend credit to the Hirer or to impose a limit on any credit extended.

7.2 When credit is not extended to the Hirer, charges are payable (on pro-forma invoice) in advance and will be invoiced on receipt of payment. In such cases the charges for delivery, installation and return of Equipment and the Hire Charges for the minimum hire period are due before delivery of the Equipment. Other Hire Charges are payable monthly in advance and other charges are payable before the work commences.

7.3 Where credit is extended to the Hirer, Hire Charges are invoiceable during each month and are payable 30 days from the invoice date. Other charges payable in respect of this Agreement are invoiceable as the services are supplied and are payable 30 days from the invoice date.

7.4 If payment is not made on the due date, the Supplier is entitled in addition to its other rights, including but not limited to termination of this Agreement, to charge the Hirer a minimum administration fee of £40.00.

7.5 Interest shall be payable by the Hirer on any amount not paid by the Hirer when due in accordance with the terms set out in the Hire Agreement or these Conditions at the rate of 8% above the base rate from the time to time of National Westminster Bank PLC's (calculated on a day to day basis) in respect of the period from the date when such amount shall fall due until receipt by us of the full amount thereof (whether before or after any judgement).

8. LIABILITY OF HIRER FOR VALUE ADDED TAX

8.1. Hire charges and all other charges are exclusive of Value Added Tax which shall be payable by the Hirer and charged at the appropriate rate at the time of invoicing.

9. DAMAGE AND INSURANCE

9.1. Except to the extent caused by fair wear and tear or the Supplier's neglect or fault the Hirer is strictly liable for any loss or damage to the Equipment however caused, and for any repairs required to the Equipment during the Hire Period.

9.2 The Hirer agrees to arrange (and if required, produce evidence of) adequate all risks insurance cover for the Equipment throughout the Hire Period and during transit to and from the Location. The interest of the Supplier shall be noted on the policy and the proceeds of any claims under such cover in respect of the Equipment will be paid over promptly to the Supplier and until such time as such proceeds are paid over, such proceeds and any claims are held on trust for the Supplier. Any shortfall in the proceeds of such insurance claims against the Supplier's costs of repair/replacement of Equipment shall be borne by the Hirer.

10. HIRER'S RESPONSIBILITY FOR EQUIPMENT

10.1. The Equipment will at all times remain the property of the Supplier and the Hirer shall:

10.1 not assign, re-hire, sell, mortgage, charge, pledge or otherwise part with possession of the Equipment in whole or in part;

10.2 keep the Equipment at the Location unless the Supplier gives prior written consent to move it elsewhere; 10.3 be responsible for the safekeeping and proper use of the Equipment and notify the Supplier promptly of any fault in the Equipment;

10.4 observe all duties of care for the Equipment required under any contract of insurance which subsists in respect of the Equipment;

10.5 not repair or attempt to repair the Equipment or allow anyone else to do so other than the Supplier's employee or a person authorised by the Supplier;

10.6 not tamper with the Equipment or do anything likely to damage it or adversely affect its performance, or obliterate or deface any words or signs on it, nor permit any other person (except a person authorised by the Supplier) to do so;

10.7 be responsible for cleanliness of the Equipment and take any necessary action to prevent damage caused by adverse environmental conditions and shall return the Equipment promptly at the end of the Hire Period in a state of cleanliness similar to that in which the Equipment was received by the Hirer;

10.8 only use consumable supplies either supplied by the Supplier or approved by the Supplier with or in conjunction with the Equipment;

10.9 provide or pay the cost of transport to and from the Supplier's premises of the Equipment if needing repair or adjustment where the Supplier opts to repair the Equipment at its premises and the Equipment cannot readily be carried in the Supplier's normal service vehicle;

10.10 provide the Supplier with full and safe access to the Equipment for the purposes of this Agreement including adequate working space around the Equipment;

10.11 provide suitable lifting equipment together with unskilled assistance for lifting or moving test weights and heavy parts and take all steps necessary to safeguard the site where the Equipment has been installed;

10.12 make available to the Supplier such programs, operating manuals and information as may be necessary to enable the Supplier to perform its obligations hereunder, and, if requested by the Supplier, provide staff familiar with the Hirer's programs and operations to co-operate with the Supplier's personnel in the diagnosis of any malfunction of the Equipment;

10.13 make available to the Supplier free of charge all facilities and services reasonably required by the Supplier to enable the Supplier to maintain the Equipment including but not limited to the provision of such telecommunications facilities as are reasonably required by the Supplier for testing and diagnostic purposes at the Hirer's expense;

10.14 notify the Supplier of any changes in the use of the Equipment which may affect its life expectancy, serviceability, general conditions or appearance; and

10.15 inform the Supplier in writing prior to the commencement of the Agreement whether the Equipment will or may come into contact with any Hazardous Substances which may contaminate the Equipment and inform the Supplier in writing if and when such event occurs and thereafter decontaminate the Equipment of any Hazardous Substances before return to the Supplier or pay for the decontamination of the Equipment to be performed by the Supplier or its agents.

11. CONSUMABLE SUPPLIES

11.1. Without prejudice to any rights that have accrued under the Agreement or any of its rights or remedies, either party may terminate. The Hirer must replace, by purchase from the Supplier, any necessary battery or consumable supplies, printheads or ink ribbons whenever needed.

11.2 Consumable supplies supplied by the Supplier on a sale or return basis are chargeable to the Hirer unless returned in good condition and with the original packaging intact and unopened to the Supplier with the Equipment at the end of the Hire Period.

12. EQUIPMENT MAINTENANCE

12.1. If the Hirer reports a fault in the Equipment the Supplier will attend to it during Maintenance Hours in accordance with the Supplier's normal Comprehensive Hardware Maintenance Service Agreement (a copy of which is available on request) or will provide any alternative service cover previously agreed in writing by the Supplier.

12.2 The Supplier may make an additional charge, in accordance with its standard scale of charges for the time being in force, for service visits:

(a) made at the request of the Hirer but which the Supplier finds are frivolous or not necessary; or

(b) made at the request of the Hirer by reason of any fault in the Equipment due to any cause other than fair wear and tear or the Supplier's negligence or fault including without limitation:

i. failure or fluctuation of electric power, air conditioning and humidity control; vibration or other environmental conditions; or

ii. the negligence or fault of the Hirer or any third party; or

iii. any fault in any attachments or associated equipment (whether or not supplied by the Supplier) which do not form any part of the Equipment; or

iv. Act of God, fire, lightning, flood or ingress of foreign material affecting the functioning of the Equipment; or

v. faults in or loss of data or software supplied, specified or programmed by the Hirer.

12.3 If the Supplier agrees with Hirer to carry out work to remedy a fault in the Equipment outside Maintenance Hours, the Hirer must pay a charge calculated at the Supplier's applicable hourly rate for the time being in force.

12.4 On receipt of notification of a fault, the Supplier undertakes to use its reasonable endeavours to despatch a suitably qualified Service Technician to the Location within eight Maintenance Hours but such response time is an estimate only and shall not be binding on the Supplier. The Supplier reserves the right to require that the Equipment be returned to the Supplier's premises for maintenance rather than be attended to on site.

12.5 Software maintenance is not provided by the Supplier under this Agreement, though the Supplier will, following hardware failure, restore an operating system supplied as part of the Equipment to the last back-up version as provided by the Hirer.

13. TESTING, AND VERIFICATION

13.1. The Supplier will attend the Trading Standards Officer whenever verification or re-verification of the Equipment is necessary, the Hirer paying only the Officer's fees and expenses and any charge for the transport and use of the Officer's Test Weights and/or equipment. For this purpose:

(a) the Hirer will allow the Supplier free use of all appropriate test weights which the Hirer may possess;

(b) the Supplier will loan, free of charge, test weights (if available), the Hirer paying the cost of transport for collection and return of

such weights

(c) for weighbridges in accessible mainland locations the Supplier will provide the services of a Weighbridge Test Unit and the Hirer will pay the Supplier's normal charges for such services.

14. **TERMINATION**

14.1. The Supplier shall be entitled to terminate this Agreement immediately at any time if the Hirer is in breach of this Agreement or if any action or proceeding in which the Hirer's solvency is involved is commenced and to repossess the Equipment or any part thereof. Such termination shall not affect the right of the Supplier to recover from the Hirer any monies due under this Agreement or damages for breach of contract.

15. **LIABILITY**

(a) Subject to clause 15.1(c), the Supplier's total liability arising out of or in connection with any Agreement, including (without limitation) under any indemnity under these Conditions, for any damage to the Hirer's property and for damage caused by the Supplier's breach of contract, tort, negligence or breach of statutory duty, shall not exceed the total Hire Charges paid for the hire in question in the aggregate in respect of all claims whether arising from one incident or more than one incident under any Agreement.

(b) the Supplier shall not be liable to the Hirer for any loss of profit or of contracts or special, consequential or indirect loss, goodwill or other intangible property (including without limitation any loss of or spoiling of data) or, loss or use, or save as aforesaid, for any loss or damage of any kind whatsoever and whether caused by the Supplier's breach of contract, tort, breach of statutory duty or otherwise howsoever.

(c) Notwithstanding any other provision to the contrary nothing in this Agreement shall limit or exclude each party's liability for death or personal injury caused by that party's negligence or that of its employees, sub-contractors or agents or for fraud or fraudulent misrepresentation, or for any liability that may not be limited in law.

16. **LEGAL CONSTRUCTION**

16.1. The construction validity and performance of the Agreement shall be governed by the laws of England and any claim or dispute arising therefrom shall be subject to the exclusive jurisdiction of and be determined by the English Courts. Nothing in this Condition shall limit the Supplier's right to take proceedings against the Hirer in any other Court of competent jurisdiction.

17. **STATUTORY AND OTHER REGULATIONS**

17.1. If the cost to the Supplier of performing his obligations under any Agreement shall be increased by reason of the making or amendment, after the date of acceptance of the Hirer's order, of any law or of any order, regulation or bye-law having the force of law that shall affect the performance of the Supplier's obligations under such Agreement, the amount of such increase shall be added to the Hire Charges.

18. **EXTRA COST**

18.1. Should the Supplier incur extra cost owing to variation or suspension of the supply of the Goods by the Hirer's instructions or lack of instructions, delays, over time, unusual hours, mistakes, or work, for which the Supplier is not responsible, a reasonable sum in respect of such extra cost including a reasonable element in respect of profit shall be added to the Hire Charges.

19. **FORCE MAJEURE**

19.1. This Agreement (including for the avoidance of doubt obligations arising under these Conditions and the documents referred to in these Conditions) may be suspended by the Supplier for such period or periods as the Supplier in his absolute discretion shall elect (and the Supplier shall have the right to cancel after a period or periods of suspension aggregating six months) without liability on the Supplier's part in the event of the Supplier being unable to fulfil or being delayed or interrupted in the fulfilment of any of the Supplier's obligations under this Agreement by reason of accidents, statutes, regulations, orders, restrictions, embargoes, boycotts, prohibitions, recommendations, requisitions or other act of national or local government, strikes, lockouts, trade disputes, war, invasion, acts of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, inclement or adverse weather conditions, fluctuations or failures of electricity and power supplies and communication line failures, shortages of raw materials or inability to secure materials, labour, transport or licences, suppliers shortages or delays or otherwise such other causes as are beyond the Supplier's reasonable control and the Hirer shall be obliged to pay for that part of the Agreement which is actually carried out by the Supplier on a pro-rata basis relation to the Hire Charges as a whole.

20. **SET OFF**

20.1.1. The Hirer shall not be entitled to withhold payment of any sums after they have become due by reason of any right of set off or counter claim which the Hirer may have or allege or for any reason whatsoever.

21. **GENERAL**

21.1 The Hirer shall not, without the Supplier's prior written consent, assign or sub let any of its rights or duties under the Agreement and shall furnish copies of any such assignments or sub contracts to the Supplier. The Supplier shall have the right, without prior notice or penalty, and the Hirer hereby consents to and shall do all acts and execute all documents necessary to enable the Supplier to assign the benefit of and/or by novation or otherwise transfer the obligations arising from the Agreement or any part thereof without restriction. The Supplier shall give to the Hirer notice of any such assignment, novation or transfer within 14 days of its occurrence.

21.2 The failure on the part of either party to exercise or enforce any right conferred by the Agreement shall not be deemed to be a

waiver of any such rights nor to operate so as to bar the exercise or enforcement thereof at any time thereafter.

21.3 Any notice required to be given under this Agreement shall be given in writing and shall be deemed to have been duly given if hand delivered or sent by prepaid post first class or email or telecopier (facsimile) addressed to the party concerned and its principal place of business or the last known address and in the case of a notice sent by prepaid post shall be deemed to be served at the time of actual delivery or 48 hours (if the Hirer's address for service is in Europe, and seven (7) days in all other instances) after posting whichever is the earlier. Notices sent by email or facsimile shall be deemed delivered when transmitted. Notices delivered by hand shall be deemed served when delivered.

21.4 In the event that any one or more of the provisions contained in these Conditions shall be invalid, illegal or unenforceable in any respect, the validity legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

21.5 The Hirer warrants to the Supplier that:

- i. it has the power to engage in the transactions contemplated by and/or contained in this Agreement.
- ii. it has full power, authority and legal right to execute and deliver the Agreement and to comply with the provisions hereof.
- iii. the obligations expressed and or assumed constitute valid and binding obligations of the Hirer.
- iv. all acts, conditions and things to be done and performed and to have happened prior to the execution and delivery of the Agreement in order to constitute all of the obligations of the Hirer hereunder as valid and binding have been done and performed and have happened in due and strict compliance with all applicable laws.

21.6 The Supplier may advertise and make known that the Supplier is undertaking work for the Hirer.

21.7 The Hirer warrants and undertakes that during the performance, and for a period of nine (9) months following the completion of the Agreement, it will not without our prior written agreement, employ or offer to employ or to introduce to any third party any person employed by us at the time of the making of this Agreement and not directly or indirectly to induce any such person to leave our employment as aforesaid.

21.8 The Hirer shall not at any time during the continuance of this Agreement or for a period of five years thereafter make any public statements regarding the Supplier which could in any manner bring the Supplier or his services or products into disrepute.

21.9 The Customer acknowledges that the Company is subject to and must comply with UK, EU and US law in respect of sanctions, other trade restrictions, export licencing requirements, bribery and corruption. Accordingly it is a condition of this Agreement that the Customer shall comply with all such law in respect of goods and services supplied directly or indirectly by us or other members of our group of companies. All Customers buying goods or services for resale shall also comply with our group global anti-corruption policy as amended from time to time. This policy is available at <http://investor.itw.com> and is alternatively available upon request from us. Breach of this clause shall be grounds for termination and shall not be considered a breach capable of remedy.

21.10 Save as otherwise expressly stated, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

22. HEADINGS

The headings of these Conditions are for convenience only and shall in no way form part thereof.