

## **JACKPAD LIMITED**

### **TERMS AND CONDITIONS OF HIRE**

#### **1. Definitions**

- “Company” means Jackpad Limited having its registered office at 1 Moathouse Road, Kirton-in-Lindsey, Gainsborough, Lincolnshire DN21 4DD including any of its trading divisions or subsidiaries.
- “Customer” means any person, body of persons, firm or company (acting in its own right or through any employee or agent) with whom the Company enters into a contract for the hire of Goods.
- “Delivery” means the delivery of the Goods by the Company or its agent to the address specified by the Customer.
- “Goods” means any Jackpad System (consisting of jackpads, adjusters and incremental packers) hired to the Customer by the Company.
- “Hire Contract” means any hire contract for Goods between the Company and the Customer.
- “Installation” means the setting up/placing of the Goods on Site in accordance with the Customer’s instructions and carried out at the Customer’s request.
- “Late Payment Regulations” means the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002 (both as amended).
- “Period of Hire” means the time commencing with the Delivery or Installation (as the case may be) of the Goods on Site and terminating when the Goods are collected from the Site by the Company or its agent at the date agreed between the Company and the Customer removed.
- “Setting Out Points” means the dimensional settings of the Structure for which the Goods are intended and required by the Company to calculate the necessary quantity of Goods.
- “Site” means the place where the Goods are to be delivered or installed.
- “Structure” means the building or other construction that is placed on top of the Goods

#### **2. These Terms and Conditions to Prevail**

- 2.1 All Contracts between the Company and the Customer, whether made orally or in writing, are subject to these terms and conditions which shall be deemed to be incorporated into any contract or transaction between the Company and all or any of its Customers.
- 2.2 These terms and conditions shall supersede all prior understandings, and shall constitute the whole

agreement, between the Company and the Customer and shall not be modified or varied unless specifically accepted by the Company in writing.

- 2.3 In the event of any conflict between these terms and conditions and any other terms and conditions, whether express or implied, incorporated or referred to in any communication from the Customer then these terms and conditions shall prevail and the Customer's terms and conditions shall be excluded in whole from the Contract.

### **3. Quotations and Acceptance of Order**

- 3.1 A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation at any time prior to the Company's acceptance of the Customer's order. Unless otherwise stated all prices quoted shall be deemed to be withdrawn 60 days after the date of quotation.
- 3.2 The quantity of Goods required as stated in any quotation is approximate and the actual number used may vary. The Company reserves the right to invoice for an additional [15]% of Goods, over and above the quantity stated in any quotation.
- 3.3 The Company's acceptance of the Customer's order (including telephone orders) shall be effective, and the Hire Contract shall be deemed to come into existence, only where such acceptance is made on the Company's headed note paper, duly countersigned by a Director or Manager of the Company.
- 3.4 No cancellation or variation of an order by the Customer shall be accepted unless approved in writing by a Director or Manager of the Company and on such terms that the Customer shall indemnify the Company in full against all and any loss (including loss of profit), costs, damages, charges and expenses incurred by the Company as a result of such cancellation or variation.

### **4. Specification**

- 4.1 The description and illustrations of the Goods given to the Customer, or contained in the Company's catalogues, brochures, price list and/or any other advertising materials, are intended to present a general idea of the Goods only and shall not form part of the Hire Contract.
- 4.2 The Company shall not be liable for any variations in any specification or description of the Goods which do not materially affect the use and operation of the Goods, or for the substitution of any materials or component parts of a quality equivalent or superior to that originally specified and the Company reserves the right to make any changes in the specification which are required to conform with any applicable safety or other statutory requirements.
- 4.3 The Company's employees or agents are not authorised to make any representations, warranties or undertakings concerning the Goods unless confirmed in writing by the Company and, in entering into the Hire Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, warranties or undertakings which are not so confirmed.

### **5. Hire Prices**

- 5.1 All prices shall be calculated and paid in Sterling.
- 5.2 All prices are quoted exclusive of VAT or other relevant taxes.

- 5.3 All rates, hire prices and discounts quoted to the Customer or published in the Company's catalogues, lists and other documents are subject to variation at any time prior to acceptance of the Customer's order by the Company. If (1) no rate or price is quoted or published at the time of acceptance of the order by the Company, or if (2) delivery of the Goods is to take place at the request of the Customer more than 30 days after the acceptance of the order by the Company, the price shall be that ruling at the date of delivery, as determined solely by the Company.
- 5.4 The Company reserves the right, by giving notice to the Customer at any time before delivery (or during delivery where the Hire Contract is being performed in stages or over a period of time), to increase the hire price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions).
- 5.5 Unless otherwise agreed in writing by the Company, all prices are given by the Company on an ex works basis. Where the Company agrees to deliver and/or install and/or collect the Goods by itself or through its agent, the Customer shall be liable to pay the Company's Delivery, Installation and/or collection charges as set out in the Company's quotation and/or Hire Contract form. Such Delivery and/or Installation charges shall become payable at the time of due payment of the first hire invoice.

## **6. Customers Responsibilities**

- 6.1 The Customer shall generally be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Site and the Structure within a sufficient time to enable the Company to perform the Hire Contract in accordance with its terms.
- 6.2 Where it has been confirmed by the Company in the order acceptance that the hire of the Goods includes their Delivery and Installation, it is the sole responsibility of the Customer to ensure that the specified Site is ready and prepared for the Delivery and (if requested by the Customer) Installation of the Goods at the precise date and time agreed. Any delay to the Delivery and/or Installation date and/or time shall entitle the Company to make a charge for waiting time at costs plus 10 per cent. In addition, the Company in such circumstances shall be entitled to make a claim for all reasonably foreseeable loss (including loss of profit) resultant from such delay.
- 6.3 Irrespective of any prior agreement between the parties, the Company shall be under no obligation to carry out the Installation of the Goods on Site unless the Customer within at least 7 days prior to delivery provides the Company with accurate and detailed information of (1) the Setting Out Points; and (2) the intended positioning of the buildings; and (3) the falls of ground and the finished floor level required (the *Information*).
- 6.4 Any Installation of the Goods under whatever circumstances is entirely at the Customer's risk. All Installation work carried out by the Company is strictly based on the Information supplied by the Customer. The Company accepts no responsibility for either the Information provided or the Installation process based on the Information. It is the Customer's sole responsibility to ensure the Information provided is accurate and complete. Any Installation work may be sub-contracted by the Company.

- 6.5 Where the Information in the Company's sole opinion is incorrect or incomplete, the Company may at its discretion refuse to carry out the Installation of the Goods. Any loss or damage incurred by the Customer due to incorrect or incomplete Information provided by the Customer (whether at the time of the Installation or at any time thereafter) or due to the Company's refusal to carry out the Installation at the pre-agreed date and time is entirely the responsibility of the Customer.
- 6.6 The Customer is responsible for informing the Company of all relevant Site safety requirements in sufficient time prior to the agreed Delivery date. Any delay caused by the Customer's failure to provide such details shall entitle the Company to make a charge for waiting time and any consequential loss incurred. The Company shall have no liability for any loss caused to the Customer due to such delay.
- 6.7 The Customer shall be solely responsible for the security of the Goods both on and/or after Delivery and/or (if applicable) Installation. If Goods are lost or stolen between the time of Delivery or Installation (as the case may be) and the time the Structure is placed onto the Goods, the Company shall be entitled to charge the Customer for their full replacement value and additional Delivery and Installation costs.
- 6.8 The Customer is made specifically aware that the long-term stability of the Goods is dependent on the stability of the ground on which the Goods are placed and on the bearing pressure of such ground. Irrespective of whether the Company carries out the Installation of the Goods, it is the sole responsibility of the Customer to ensure that the ground stability and its bearing pressure are adequate for the intended purposes. The Company accepts no liability whatsoever for any such issues.
- 6.9 The means of unloading the Goods must in all cases be supplied by the Company.
- 6.10 The Customer must under no circumstances part with control of the Goods whether temporarily or permanently. If the Customer does so part with control, the Customer shall pay to the Company immediately on demand the full replacement value of such Goods (irrespective of whether or not such Goods are later retrieved by the Customer).
- 6.11 The Company accepts no liability for the ground conditions at the Site. It is the Customer's responsibility to research the same thoroughly prior to placing an order.
- 6.12 It is the Customer's sole responsibility to return any excess Goods (in particular, incremental packers) to the Company. If the Customer requests collection, the Company or its agent agrees to collect the same at additional cost.
- 6.13 Any assignment of the Hire Contract requires the Company's prior written approval. It is a pre-condition of any approval by the Company that the Customer can demonstrate that the Company's retention of title rights over the Goods are transferred with the assignment.

## **7. Payment of Hire Charges**

- 7.1 All hire charges for the Period of Hire are calculated on a weekly basis and are invoiced monthly.
- 7.2 The first initial hire charge invoice is due for payment on the last business day of the month following the month of Delivery or Installation. Payment of any subsequent invoice must be made in full within 30 days of the date of invoice.

- 7.3 Any amount due by the Customer to the Company under the Hire Contract shall be payable in full without any compensation, set-off or counterclaim.
- 7.4 Time of payment shall be of the essence of the Hire Contract.
- 7.5 Where any account, or any part thereof, is overdue for payment the Customer shall cease to be entitled to the benefit of any discount specified in that account and the Company shall be entitled to charge interest and compensation in accordance with Late Payment Regulations.
- 7.6 If the Customer fails to make timeous payment in accordance herewith then, in addition to any other remedies available to the Company, the Company shall be entitled to charge interest on all hire charges at the rate of 5% above the base rate of HSBC Bank plc for the time any due payment is outstanding. In addition, the Company may either suspend all further deliveries of the Goods under the Hire Contract until payment is made in full or, at its option, treat the Hire Contract as repudiated. In such case, the Company shall be entitled to collect the Goods from the Site(s) and the Customer hereby agrees to immediately on demand facilitate at its own cost the removal of the Structure from the Goods so that the Goods can be collected. Any demands or claims by a third party (being, without limitation, the owner or hirer of the Structure) relating directly or indirectly to the removal of the Structure are the sole responsibility of the Customer.
- 7.9 If the Customer repudiates the Hire Contract for any reason, or is deemed to have repudiated the Hire Contract in accordance with Clause 7.5 or 7.6, then the Company shall, in addition to any other remedy available to it, be entitled to seek damages for any loss suffered by it as a result of the Customer's repudiation.
- 7.10 The Company, at its sole discretion, may demand full or partial payment of the hire charges prior to delivery or the provision of security for payment by the Customer, in a form acceptable to the Company.

## **8. Title**

- 8.1 The Goods remain the sole property of the Company at all times. Legal and beneficial ownership and title in and to the Goods remains with the Company at all times.
- 8.2 The Customer is not entitled to move the Goods from their initial location to another site without first obtaining the written approval of the Company. Any breach of this obligation shall constitute a fundamental breach and in such instances the Company shall be entitled to charge the Customer the full sale price of any Goods so removed.
- 8.3 If payment of hire charges is not made in accordance with the Hire Contract, the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company, or its employees or agents, or, at the Company's sole discretion, forthwith to enter upon any premises or property of the Customer or any third party where the Goods are situated (with the Customer's express consent which is impliedly granted by these Terms and Conditions becoming part of the Hire Contract) and to repossess the Goods.
- 8.4 The Customer shall not be entitled to pledge, or in any way charge by way of security, any of the Goods which remain the property of the Company but, if the Customer does so, all monies owing by the Customer to the Company shall, without prejudice to any other remedy available to the Company, forthwith become due and payable.

- 8.5 If: -
- (i) the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction): or
  - (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
  - (iii) the Customer ceases, or threatens to cease, to carry on business; or
  - (iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the customer accordingly

then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel any contract or suspend any further deliveries under any contract without any liability to the Customer. As the Goods are the property of the Company, no receiver or liquidator of the Customer shall be entitled to move or sell the Goods. In these circumstances, the Customer hereby accepts and consents that the Company shall be entitled to enter any premises or property where the Goods are located and repossess the Goods.

8.6 The Customer shall not be entitled to in any way annex the Goods to any property or premises (whether his own or that of a third party) without the Company's prior express written consent.

8.7 If the Customer transfers property of the property at which the Goods are situated to a third party, the Customer must prior to the time of transfer notify the Company and the third party in writing of the fact that the Company retains title in and to the Goods. The Company at its sole discretion shall on receipt of such notification be entitled to terminate the Hire Contract with immediate effect and demand the delivery up of the Goods. If the Goods are not delivered up within 14 days of such demand the Customer agrees to pay the full replacement value (current at the time) of the Goods.

## **9. Risk**

9.1 Notwithstanding that property and title in the Goods does not pass to the Customer, the risk of loss, damage or destruction to the Goods shall pass to the Customer on delivery.

## **10. Delivery / Installation**

10.1 Unless otherwise specified, Delivery or Installation dates, times or periods given by the Company are estimates only and shall not be essential terms of the Hire Contract. Delivery dates, times or periods shall apply as set out in the Company's written order confirmation, based on information provided by the Customer.

10.2 Delivery of the Goods shall take place:-

- (a) in the event that the Company undertakes delivery of the Goods, when the Goods are unloaded from the Company's means of transport at the Site specified by the Customer; or
- (b) in the event that the Customer undertakes to collect the Goods, when the Goods are loaded onto the Customer's carriage, lorry or other transport at the Company's premises.

10.3 Any receipt obtained by the Company from the Customer, or its employee or agent, accepting or taking delivery of the Goods (or such part thereof as is indicated by the receipt) shall be conclusive

evidence of delivery in perfect condition by the Company.

- 10.4 It is the Customer's responsibility to be at the Site at the agreed Delivery and/or Installation date and time and to oversee Delivery and Installation. If the Customer fails to attend, the Customer hereby agrees to accept satisfactory Delivery and/or Installation by the Company. The Company in such circumstances accepts no responsibility for any loss or damage caused by Delivery delay or inadequate Installation.
- 10.5 The Company may elect to deliver the Goods in instalments and no failure by the Company in respect of any one or more instalments shall entitle the Customer to treat the Hire Contract as a whole as repudiated.
- 10.6 If the Customer fails to take delivery of the Goods (or any part(s) thereof) on the due date, or to give adequate instructions to enable the Goods to be delivered on the due date, the Company may issue a written notice to the Customer stating that risk in the Goods shall be deemed to have passed to the Customer on the date delivery was due. Thereafter the Company shall store the Goods at the Customer's expense but, regardless of whether or not a written notice has been given to the Customer by the Company, the Customer shall indemnify the Company in respect of all losses, costs, claims, damages, and expenses incurred by the Company arising as a result of the Customer's failure.

## **11. Goods Defective**

- 11.1 Any Goods considered to be damaged or defective shall be notified by the Customer to the Company within 14 (fourteen) days from discovery of damage/defect. In no circumstances should the Customer proceed to remove or repair any Goods without the Company's prior written approval. The Company or its agents shall have the right to investigate the complaint and examine the Goods and, if possible, to remedy any defect. Any breach of this condition will release the Company from any liability for Goods which are alleged not to conform to Hire Contract.
- 11.2 If the Company agrees with the Customer that the Goods are damaged or defective and that it is not possible to remedy any defect then the Company shall, at its sole option, replace the Goods or credit the Customer accordingly.
- 11.3 If the Company disagrees with the Customer that the Goods are damaged or defective, or disagrees in relation to how such a defect has arisen then the dispute shall within 7 days be referred to an independent third party appointed jointly by the Company and the Customer or, failing agreement within 7 days, by a party appointed, on the application of either the Company or the Customer, by the President for the time being of The Institute of Structural Engineers. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne equally by, the Company and the Customer.
- 11.4 The Company shall have no liability to the Customer in respect of damaged or defective Goods (and the Customer shall be required to pay the full contract price) where:-
- (a) any claim made by the Customer is not in accordance with these terms and conditions
  - (b) damage has been sustained after delivery of the Goods to the Customer, or its agents
  - (c) defects are caused by storage, installation, handling, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Goods or by wear and tear, accident or misuse, improper operation or neglect or if any adjustment, alteration or other work has

been performed on the Goods by any person other than the Company or its employees or agents

- (d) a receipt has been obtained by the Company, duly signed by the Customer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition.

## **12. Limitation of Liability**

- 12.1 In all circumstances the Company shall be under no liability:-
  - (a) in respect of any defect in the Goods arising from any information, drawing, design or specification supplied by the Customer
  - (b) where any of the circumstances referred to in Clause 11.4(a) to (d) occur
  - (c) to the extent that any hire charges for the Goods have not been paid by the due date for payment
  - (d) for any consequential loss whatsoever and howsoever caused.
- 12.2 The Company's liability howsoever arising shall not in any event exceed the amount paid by the Customer for the Goods hired.
- 12.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 12.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

## **13. Termination / Collection**

- 13.1 The Customer may terminate the Hire Contract by giving a minimum of thirty (30) days written notice of termination. The Hire Contract shall continue until the end of the month in which the end of the 30 day period falls.
- 13.2 The Company shall be entitled to terminate the Hire Contract at any time and shall be entitled to repossess the Goods with immediate effect where the Customer is in breach of any of the terms of the Hire Contract.
- 13.3 The Customer agrees to pay the Company's reasonable collection charges on termination of Hire Contract.
- 13.4 It is a condition of termination that the Customer shall allow the Company (or shall procure that the Company is allowed) full and unrestricted access for the purposes of removing the Goods from Site at the end of the Hire Period.
- 13.5 It is the Customer's sole responsibility to organise the collection of the Goods and in particular (but



without limitation) to ensure that the removal of the Structure and the collection of the Goods coincides. If any Goods are lost or stolen as a result, the Customer hereby agrees to pay the Company the full replacement value (current at the time of breach) of any lost or stolen goods.

- 13.6 If on collection any Goods are found to be damaged, the Customer agrees to pay to the Company their full replacement value (current at the time).
- 13.7 It is the responsibility of the Customer to attend collection of the Goods. A counter-signed collection note and status report confirms collection. If the Customer fails to attend the Site at the agreed collection date and time then it hereby appoints the Company as its agent for the purposes of inspecting the Goods for shortages and damage purpose. The Company's status report shall in such circumstances be final and binding on both parties.

#### **14. Force Majeure**

The Company shall not be liable for any delay, or other failure to perform any part of the Hire Contract, as a result of any factor outside the Company's control, whether an Act of God or otherwise.

#### **15. Notices**

Any written notice to be given under the Hire Contract shall be given by way of first class Recorded Delivery post or facsimile or electronic mail transmission or by personal delivery by the party giving it to the other, at his last known business address notified to the other, and shall be deemed to be delivered either 48 hours after posting (in the case of a letter) or within 3 hours after receipt during normal weekday business hours (in the case of facsimile or electronic mail transmission or personal delivery).

#### **16. Indemnity**

The Customer shall fully indemnify the Company against all costs, claims, damages and expenses to which the Company may become liable if use of the Goods by the Customer in any way involves an infringement of an intellectual property right enjoyed by a third party. The Customer shall further indemnify the Company against all claims for injury to persons or loss of or damage to property however caused unless it is proven that such injury or damage resulted directly from faulty materials, workmanship or negligence on the part of the Company.

#### **17. Determination**

If the Customer shall make default in, or commit any breach of, any of its obligations to the Company, or if any distress or execution shall be levied upon the Customer, its property or assets or if the Customer shall make or offer to make any arrangement or composition with its creditors or if any petition or receiving order in bankruptcy shall be presented or made against the Customer or, if the Customer is a limited company, any resolution or petition to wind up the Customer's business is passed or presented (otherwise than for reconstruction or amalgamation) or if a receiver is appointed to the Customer's undertaking, property or assets or any part thereof, then the Company shall have the right forthwith to determine any order then subsisting, without prejudice to any other remedies available to the Company, and all sums to be paid to the Company by the Customer shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **18. General**

- 18.1 The Company may in its absolute discretion but the Customer shall under no circumstances be entitled to assign or transfer, in whole or in part, the benefit or burden of the Hire Contract without prior written consent.
- 18.2 The rights and remedies of the Company set out in these conditions shall be in addition, and without prejudice, to any other rights and remedies which may be available to the Company at common law or under statute.

## **19. Invalidity**

If any part of these terms and conditions for any reason should be held to be invalid, such invalidity shall not affect the remaining clauses of these terms and conditions.

## **20. Governing Law**

These terms and conditions shall be governed by and construed in accordance with the Law of England and the parties hereto hereby choose and submit to the express and exclusive jurisdiction of the English courts.