

# WOLSELEY UK - CONDITIONS OF HIRE (Effective May 2015)

## 1 Definitions and interpretation

1.1 In addition to any terms defined in these terms and conditions, the following definitions shall apply:

- (a) **"Agreement"** means the terms set out in the Hire Contract, any prices, price list and/or trading terms agreed between Wolseley and the Hirer in writing, and these terms and conditions, which the parties agree apply to the hiring of the Equipment;
- (b) **"Equipment"** means any equipment and property hired to the Hirer by Wolseley as set out in the Hire Contract, including all additions, substitutions, replacements and renewals of such equipment and property and all related accessories, logbooks, manuals and instructions provided for it;
- (c) **"Hire Charges"** means the charges as referred to or set out in the Hire Contract, and where no specific charges are set out in the Hire Contract the **'Hire Charges'** shall be the charges set out in any prices, price list and/or trading terms agreed between Wolseley and the Hirer in writing, together with any applicable VAT, delivery or collection fees and any other applicable taxes and fees charged to the Hirer by Wolseley for the hire of the Equipment;
- (d) **"Hire Contract"** means the document signed by the Hirer in which the Hirer agrees to hire the Equipment from Wolseley;
- (e) **"Hire Period"** has the meaning given to that term in clause 2.2;
- (f) **"Hirer"** means the person hiring the Equipment under this Agreement and identified as the 'Hirer' or the 'Customer' in the Hire Contract;
- (g) **"Outstanding Balance"** has the meaning given to that term in clause 9.4;
- (h) **"Risk Period"** has the meaning given to that term in clause 7.1;
- (i) **"Site"** means the location where the Hirer intends to use the Equipment as notified to, and agreed in writing by, Wolseley from time to time; and
- (j) **"Wolseley"** means Wolseley UK Limited registered in England and Wales under registration no. 00636445 whose registered office is at Wolseley Center, Harrison Way, Leamington Spa CV31 3HH, and its successors and assignees.

## 2 Agreement to hire

- 2.1 This Agreement shall come into force as of the date of the signature of the Hire Contract. If the Hirer has provided any documents containing terms and conditions, the Hirer hereby agrees that those terms shall not apply and only the terms and conditions of this Agreement shall apply to the hiring of Equipment between the parties.
- 2.2 In consideration of the amounts to be paid by the Hirer for the hiring of the Equipment pursuant to this Agreement, Wolseley agrees to let, and the Hirer agrees to take on hire, the Equipment in accordance with this Agreement. Subject to clause 2.4, the hiring of the Equipment will start on the 'Start Date' (as set out in the Hire Contract) and, unless terminated earlier in accordance with the terms of this Agreement, will continue until either party terminates the hiring of the Equipment in accordance with clause 9 (the **"Hire Period"**).
- 2.3 Provided the Hirer is not in default in the payment of any sum payable under this Agreement or otherwise in breach of any of the provisions of this Agreement, it shall be entitled to enjoy quiet possession of the Equipment.
- 2.4 Notwithstanding any term of this Agreement to the contrary:
  - (a) there is a minimum period of hire as set out in the Hire Contract or in any price list and/or trading terms agreed between Wolseley and the Hirer in writing (and where no minimum period of hire is set out the minimum period of hire shall be 3 days, and the

Hirer shall be charged Hire Charges for that period as a minimum); and

- (b) if the Equipment is hired to an individual or an unincorporated business, the Hire Period will in all circumstances end within 3 months from the date of commencement of hire, and the Hirer must return the Equipment in accordance with the terms of this Agreement prior to the expiry of this period.

2.5 The Equipment is hired to the Hirer on the basis that it is used only for commercial and business use. The Hirer must not use the Equipment for any other purpose.

2.6 Where the Hirer makes an order for the hiring of the Equipment or any other goods but amends or cancels the booking in advance of the hiring commencing, the Hirer shall pay to Wolseley promptly on demand all costs reasonably incurred by Wolseley in fulfilling the order up until the date of deemed receipt of the amendment or cancellation, including without limitation any carriage or delivery costs.

## 3 Payment

3.1 The Hirer will pay the Hire Charges and all other amounts payable under this Agreement to Wolseley in full and cleared funds on their due date for payment without demand and whether or not an invoice has been raised. Punctual performance by the Hirer of all its obligations under this Agreement (including payment of Hire Charges and all other sums due under this Agreement) is a vital condition of this Agreement.

3.2 The Hire Charges and all other sums due under this Agreement from the Hirer to Wolseley shall be made without any abatement, deduction, set-off, withholding or counterclaim whatsoever. If the Hirer is required by law to make any deduction in respect of any payment due under this Agreement, the Hirer shall increase the payment due by an amount which, after making the required deduction, leaves Wolseley in the position it would have been in had the deduction not been required. All payments by the Hirer under this Agreement shall be paid in pounds sterling and by direct debit or any other means agreed by Wolseley and shall be made to the bank account nominated in writing by Wolseley.

3.3 All Hire Charges and other amounts payable under this Agreement are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.

3.4 Wolseley shall be entitled to invoice the Hirer on the date of commencement of the hire or on a monthly basis. Payment is due from the Hirer within 30 days from the date of the invoice unless otherwise agreed in writing by Wolseley.

3.5 If the Hirer fails to make any payment due to Wolseley under this Agreement by the due date for payment, then, without limiting Wolseley's other rights and remedies, the Hirer shall pay interest on the overdue amount to Wolseley in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Hirer shall pay the interest together with the overdue amount. The Hirer shall also pay to Wolseley its reasonable costs incurred in recovering any overdue payment from the Hirer.

3.6 Except as expressly provided for under this Agreement:

- (a) the payment of sums due under this Agreement shall not be affected in any way by the loss, damage, theft or Total Loss of the Equipment; and
- (b) there shall not be any rebate or deferral of any payment during any period in which the Equipment is not working, is not in the Hirer's possession, is unserviceable or is unavailable for use.

3.7 If Wolseley requests a deposit is paid by the Hirer for the hire of the Equipment, the deposit must be paid in full before the Equipment is delivered or collected by the Hirer. Upon expiry of this Agreement, and provided that the Hirer has paid all Hire Charges, has returned the Equipment in accordance with the terms of this Agreement, and has complied with all its other

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obligations under this Agreement, the deposit will be refunded to the Hirer. No interest shall be re-paid to the Hirer with the deposit.

- 3.8 If the Hirer has entered into a number of agreements with Wolseley, Wolseley may appropriate and allocate any monies (in whole or in part) received at any time from the Hirer as Wolseley, in its discretion, thinks fit (despite any appropriation or allocation by the Hirer) in satisfaction of amounts due and payable by the Hirer under any agreement between Wolseley and the Hirer.

## 4 Delivery

- 4.1 Where it has been agreed in writing by Wolseley that it will deliver the Equipment (but not otherwise) delivery shall be made by Wolseley to a location agreed with the Hirer. Wolseley shall use reasonable endeavours to effect delivery by the date and time agreed with the Hirer. The Hirer shall ensure that an authorised representative of the Hirer is present to receive delivery of the Equipment. Where Wolseley has tried to deliver the Equipment but has been unable to because of any act or omission of the Hirer, the Hirer shall reimburse Wolseley on demand any costs incurred by Wolseley for the aborted delivery. In all other circumstances, the Hirer shall be solely responsible for arranging for delivery or collection of the Equipment from Wolseley.

- 4.2 Time of delivery or collection of the Equipment is not of the essence and all delivery and collection dates and times provided are estimates only. The Hirer may not refuse to take delivery, claim damages or terminate this Agreement for late delivery. Wolseley shall not be liable for any failure, nor shall Wolseley be liable for any failure by the Hirer, to arrange delivery or collection of the Equipment on the estimated delivery and collection dates.

- 4.3 Delivery or collection of the Equipment shall be at the Hirer's expense. To facilitate delivery or collection of the Equipment, the Hirer shall at its expense provide all requisite materials, facilities, access and suitable working conditions to enable delivery or collection to be carried out safely and expeditiously. The Hirer shall be responsible for the unobstructed access and, unless otherwise agreed in writing with Wolseley, for unloading and loading of the Equipment at the Site and at Wolseley's collection depot, and any personnel supplied by Wolseley for assisting the Hirer with such unloading and/or loading shall be deemed to be under the direction and control of the Hirer. Such personnel shall for all purposes in connection with their employment in the loading and/or unloading shall be regarded as the servants or agents of the Hirer who alone shall be responsible for all claims arising in connection with unloading and or loading of the Equipment by, or with the assistance of, such personnel.

- 4.4 The Hirer shall carry out a thorough immediate inspection of the Equipment upon delivery or collection. Unless the Hirer notifies Wolseley in writing within 72 hours of delivery or collection of any defect in or issue with the Equipment, it shall be deemed that: (a) the Hirer is satisfied the Equipment is safe and without risk to health when used; and (b) the Equipment is in good working order and condition, fit for the purpose for which it is required and in every way satisfactory to the Hirer (save for any inherent and latent defect not ascertainable by reasonable examination).

- 4.5 Where it has been agreed in writing by Wolseley (but not otherwise), Wolseley will provide training to the Hirer at the Site in the use, operation and manual handling of the Equipment. Training shall take place at a time and date agreed between the parties. Wolseley shall inform the Hirer of the charges for providing such training and the Hirer shall pay such charges to Wolseley in accordance with clause 3.

## 5 Title and interest in Equipment

- 5.1 The Equipment shall at all times remain the property of Wolseley, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement).

- 5.2 The Hirer shall not sell, offer for sale, transfer, assign, mortgage, pledge, charge, underlet, lend or otherwise deal with the Equipment or any interest in it nor allow the creation

of any lien over it and shall protect the Equipment against repossession, distress, execution or seizure (or in Scotland, any form of diligence).

## 6 Use and care of the Equipment

- 6.1 The Hirer shall:

- (a) look after the Equipment and keep it in good condition and working order (fair wear and tear only excepted);
- (b) allow Wolseley or its duly authorised agent or representative at reasonable times and upon reasonable notice to enter its premises to inspect, test, repair, service or replace the Equipment and any records relating to the Equipment;
- (c) allow Wolseley to affix and keep affixed to the Equipment in a prominent visible position a notice stating the Equipment is the property of Wolseley, and the Hirer shall not remove, deface or cover up such notice;
- (d) keep the Equipment at all times in the possession or control of the Hirer and at the Site, and shall not move or attempt to move any part of the Equipment to any other location without Wolseley's prior written consent;
- (e) use the Equipment in a skilful and proper manner and in accordance with any operating instructions issued for it and shall ensure that the Equipment is operated and used by properly skilled and trained personnel;
- (f) not use the Equipment for any unlawful purpose or for any purpose for which such Equipment is not designed, reasonably suited, normally put to use or in a manner not fully covered by the insurances referred to in clause 7;
- (g) not make any alteration to the Equipment or remove any component from the Equipment unless it is replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a like make and model to that removed or any improved or advanced version of it;
- (h) comply with all statutory and other obligations of all kinds in relation to the Equipment and the use of it and obtain, effect and keep effective all permissions, licences and permits which are required in connection with the Equipment and its use; and
- (i) not affix the Equipment to any land or building without the prior written consent of Wolseley and shall make good any damage caused by the affixation or removal of the Equipment from any such land or buildings.

## 7 Insurance, Total Loss and damage to the Equipment

- 7.1 Risk in the Equipment (including risk of loss, theft, damage or destruction) shall pass to and be solely borne by the Hirer from the date of delivery or collection of the Equipment until the Equipment is returned to or recovered by Wolseley in accordance with this Agreement (**Risk Period**).

- 7.2 At all times during the Risk Period the Equipment must be fully insured. The Hirer may cover the Equipment by its own current insurance or, if the Hirer's insurance does not cover the Equipment or comply with the requirements of this clause 7, the Hirer must take out insurance to cover the Equipment with a reputable insurance office. The insurance cover must be a comprehensive policy without restriction or excess against all risks of loss or damage for the Equipment's full replacement value and against all third party liability for an amount which is prudent in all the circumstances. The Hirer shall ensure that Wolseley's interest in the Equipment shall be noted on the policy and Wolseley will be noted as loss payee for the Equipment. The Hirer must pay all premiums and keep the relevant policy in full force and effect during the Risk Period. At the request of Wolseley, the Hirer shall provide a copy of the related policies together with evidence of payment of the

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- premiums. The Hirer shall ensure that neither the Hirer nor the insurer can cancel the insurance without Wolseley's prior written consent. If the Hirer fails to insure the Equipment in accordance with this clause 7, Wolseley may (but is under no obligation to do so) pay the relevant premium or effect the insurance required and the Hirer shall reimburse Wolseley on demand the cost of doing so. The Hirer must ensure (and instruct the insurer) that in all circumstances any insurance proceeds are paid directly to Wolseley.
- 7.3 Wolseley may decide, in its sole discretion, to accept evidence that the Hirer holds adequate self-insurance in substitution for the requirement to hold insurance pursuant to clause 7.2. If Wolseley elects to accept a self-insurance arrangement, the Hirer agrees to provide Wolseley with such information regarding the self-insurance as it shall require from time to time throughout the Risk Period. Wolseley reserves the right to require the Hirer to take out an insurance policy pursuant to clause 7.2 at any time during Risk Period.
- 7.4 The Hirer shall inform Wolseley immediately if the Equipment is damaged, faulty or breaks down or if the Equipment is involved in any accident resulting in damage or injury to any person or property.
- 7.5 If, in the opinion of Wolseley or an insurer, the Equipment is stolen and not recovered, irreparable, destroyed or there is a total loss, constructive loss or arranged total loss of the Equipment (each a **Total Loss**), at the option of Wolseley:
- (a) the hiring of the relevant Equipment the subject of the Total Loss shall terminate (but without prejudice to Wolseley's other rights and remedies under or in connection with this Agreement which shall continue in full force and effect), in which case the Hirer shall pay to Wolseley on demand an amount equal to the Outstanding Balance less any insurance proceeds received by Wolseley from an insurer in respect of the Equipment the subject of a Total Loss; or
- (b) Wolseley may replace the Equipment with equipment of the same specification, age and condition and the replacement equipment shall be deemed to be 'Equipment' for the purposes of this Agreement, in which case the hiring under this Agreement shall be deemed to continue.
- 7.6 If loss or damage to the Equipment occurs that does not amount to a Total Loss, the Hirer must immediately return or make the damaged Equipment available to Wolseley. Wolseley will either repair the damaged Equipment or replace the damaged Equipment with equipment of the same or similar specification, age and condition (subject to availability of equipment), in which case the hiring under the Agreement shall continue and the replacement equipment shall be deemed to be 'Equipment' for the purposes of this Agreement. During any period of repair, the hiring of the Equipment under this Agreement shall continue and the Hirer shall remain liable at all times to pay the Hire Charges. The Hirer shall be responsible for all costs and expenses in connection with the repair or replacement of any damaged Equipment and shall reimburse Wolseley on demand for all such costs and expenses incurred by Wolseley. Wolseley may (at its discretion) use any insurance proceeds received for loss or damage to the Equipment towards payment of any amounts due from the Hirer under this Agreement or towards making good the loss or damage to the Equipment. The Hirer shall not repair the Equipment, or arrange for a third party to repair the equipment, without the prior written consent of Wolseley.
- 7.7 If the Equipment is lost or stolen, the Hirer shall use its best endeavours to recover the Equipment and shall fully co-operate in good faith with Wolseley, including acting on the reasonable instructions of Wolseley, to assist Wolseley to recover the Equipment.
- 8 Safety**
- 8.1 The Hirer is responsible for the safe operation of the Equipment for the duration of the Risk Period. The Hirer is responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Factories Acts, Health and Safety at Work Act etc.
- Act and observance and compliance with the Road Traffic Acts should they apply.
- 8.2 The Hirer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable the Equipment to be used and operated safely and shall ensure that the Site is kept in good condition to enable the safe use and operation of the Equipment.
- 8.3 The Hirer must ensure that:
- (a) any operator of the Equipment is properly instructed on the safe use and correct operation of the Equipment and that the Equipment is only operated in accordance with the operating and safety instructions supplied, and if the Hirer does not understand the operating and safety instructions supplied it must seek assistance from a suitably qualified person or from Wolseley before using the Equipment;
- (b) if any part of the Equipment is electrical, all electrical equipment is connected to the correct supply via suitable plugs or sockets, and where a temporary change in electrical plugs or sockets is required, this must be carried out by a qualified electrician who must also re-instate the Equipment to its original condition, and the Hirer must ensure that all electrical equipment is correctly earthed and insulated; and
- (c) all liquid fuels and compressed gases supplied for use with the Equipment are transported, stored and used in a safe manner in accordance with any safety instructions supplied, or as instructed by Wolseley.
- 9 Termination**
- 9.1 Without affecting any other right or remedy available to Wolseley, Wolseley may terminate the hiring of the Equipment and/or this Agreement for convenience at anytime by providing to the Hirer not less than 24 hours' written notice.
- 9.2 Subject to clause 2.4, the Hirer may terminate the hiring of the Equipment under this Agreement at any time upon:
- (a) providing Wolseley with such notice of termination as is required by the Hire Contract or any price list and/or trading terms agreed between Wolseley and the Hirer in writing (and where no minimum notice period is set out, the minimum notice period shall be 24 hours); or
- (b) returning the Equipment to Wolseley and receiving a duly completed receipt in respect of such return from Wolseley.
- 9.3 Without affecting any other right or remedy available to Wolseley, Wolseley may, after giving any notice required by law, terminate the hiring under this Agreement on the occurrence of any of the following events, if:
- (a) the Hirer fails to pay any Hire Charges or any other sum due under this Agreement to Wolseley by its due date;
- (b) the Hirer materially fails to comply with or breaches any other provision of this Agreement and, where such breach is capable of remedy, fails to remedy the same within 7 days of a notice from Wolseley requiring its remedy;
- (c) the Hirer does or allows to be done any act or thing that may prejudice or endanger Wolseley's property or rights in the Equipment;
- (d) the Hirer: is unable to pay its debts as they fall due, has a bankruptcy order made against it (or in Scotland be sequestrated or become apparently insolvent); is liquidated or wound up or has a petition for winding up presented against it or passes a resolution for voluntary winding up; convenes any meeting of all or any of its creditors or makes a deed of assignment or arrangement or otherwise compounds with all or any of its creditors;

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- (e) any steps are taken to appoint an administrator or administrative receiver over the Hirer or to appoint a receiver over any of the Hirer's assets;
- (f) the Hirer abandons the Equipment or any step is taken to levy distress or execution upon the Equipment (or in Scotland any form of diligence is done or threatened by a third party affecting the Equipment);
- (g) the Hirer, being an individual, dies;
- (h) the Hirer, being a partnership, is dissolved or proceedings for its dissolution are commenced;
- (i) there is, in the opinion of Wolseley, a material adverse change in the financial position or business of the Hirer;
- (j) where the Hirer is an incorporated body, there is any change in the control, ownership or shareholding of the Hirer or any holding company of the Hirer from that existing at the date of this Agreement.
- 9.4 Where Wolseley terminates the hiring of the Equipment in accordance with clause 9.3, Wolseley's consent to the Hirer's possession of the Equipment shall determine immediately and Wolseley may take possession of the Equipment and the Hirer shall pay to Wolseley the **Outstanding Balance**, calculated as follows:
- (a) all arrears of the Hire Charges and other sums due under this Agreement together with all costs and expenses incurred by Wolseley in recovering the Equipment and enforcing its rights under this Agreement; plus
- (b) a sum equal to all the Hire Charges that would have been payable (in the absence of any early termination) during the remainder of the Hire Period (subject to the minimum hire period set out in clause 2.4); plus
- (c) if the Equipment is not returned or recovered in the good working order and condition and as required by this Agreement, all costs and expenses incurred by Wolseley in restoring the Equipment to the condition required by this Agreement; plus
- (d) if Wolseley is unable to recover the Equipment for any reason, or if it is a Total Loss, the amount which Wolseley anticipated the Equipment would be worth on expiry of the Hire Period.
- The sums payable pursuant to this clause 9.4 shall be agreed compensation for Wolseley's loss and such sums may be partly recovered from any deposit paid by the Hirer.
- 9.5 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination. Wolseley reserves its rights and remedies at law for any breach of this Agreement and may enforce such rights and remedies either separately or in conjunction with the provisions of this Agreement.
- ## 10 Return of Equipment
- 10.1 On expiry or termination of the hiring of the Equipment and/or this Agreement for any reason, the Hirer shall at its own expense promptly return the Equipment to a location in the United Kingdom notified to the Hirer by Wolseley. The Equipment shall be in good repair and working order and commensurate with the performance by the Hirer of its obligations under this Agreement. Where the Hirer fails to promptly return the Equipment to Wolseley on the expiry or termination of the hiring of the Equipment and/or this Agreement, Wolseley or its agents may access any premises where the Equipment may be for the purpose of removing it. The Hirer hereby grants such right of access Wolseley and its agents and the Hirer shall reimburse Wolseley any costs it incurs in doing so.
- 10.2 If the Hirer fails to promptly return the Equipment to Wolseley on the expiry or termination of the hiring of the Equipment and/or this Agreement, the Hirer shall be liable to continue paying the Hire Charges (at the rate and frequency prevailing immediately prior to expiry or termination) in respect of any period after the expiry or termination of the hiring of the Equipment and/or this Agreement when the Hirer wrongfully retains the Equipment. Such use or possession of the Equipment shall not be construed as a renewal of the hiring of the Equipment or this Agreement or an extension of the Hire Period, and the Hirer remains obliged to deliver up the Equipment to Wolseley.
- 10.3 To the extent that the Equipment is not returned to Wolseley in good working order and condition (fair wear and tear excepted) and adequately cleaned, the Hirer shall indemnify Wolseley for Wolseley's reasonable costs of repairing or cleaning the Equipment and shall pay such amounts promptly and on demand to Wolseley. If the Equipment is not returned to Wolseley within a reasonable time period and Wolseley is unable to recover the Equipment, or if the Equipment is a Total Loss, Wolseley shall be entitled to charge, and the Hirer shall pay promptly on demand by Wolseley, an amount equal to the amount which Wolseley anticipated the Equipment would be worth on expiry of the Hire Period.
- 10.4 Where it has been agreed in writing by Wolseley that it will collect the Equipment (but not otherwise), Wolseley shall use reasonable endeavours to collect the Equipment on a date agreed with the Hirer. The Hirer must give Wolseley at least 24 hours prior written notice if it requests that Wolseley collects the Equipment. The Hirer must ensure that the Equipment is ready for collection. The Hirer shall be liable for the costs of collection and shall reimburse Wolseley on demand for all reasonable costs and expenses incurred by Wolseley in collecting the Equipment.
- 10.5 Upon collection or return of the Equipment, Wolseley may provide the Hirer with a return / collection receipt. The return / collection receipt is evidence only that the Equipment has been returned or collected and it is not an acknowledgement or confirmation as to the condition or quality of the Equipment at the time of return or collection. By providing a return / collection receipt, no waivers are given by Wolseley and Wolseley expressly reserves all its rights and remedies in respect of any breach of, or default under, this Agreement (including without limitation a breach of the Hirer's obligation under this clause 10).
- 10.6 If the Hirer returns to Wolseley any items that do not belong to Wolseley, whether attached to the Equipment or not, the Hirer shall be solely responsible for such items and for arranging collection and return of such items to their owner.
- ## 11 Warranty and liability
- 11.1 Subject to clause 11.2, the Equipment provided by Wolseley shall substantially conform to any specification provided by Wolseley with such Equipment and Wolseley will provide Equipment to the Hirer that is in good working order and condition, fit for the purpose for which the Equipment is normally put to use and free from defects, save for minor defects which do not render the Equipment unusable drawn to the attention of the Hirer prior to the date of delivery or collection of the Equipment or which should be ascertainable from the Hirer's thorough inspection of the Equipment upon delivery or collection.
- 11.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by Wolseley, Wolseley shall provide, and the Hirer shall be entitled only to, such warranty or other benefit as Wolseley has received from the manufacturer of the Equipment.
- 11.3 If upon delivery or collection of the Equipment the Hirer is aware of any defect in the Equipment, the Hirer must immediately notify Wolseley who shall use reasonable endeavours to remedy such defect. If Wolseley is unable to repair the Equipment Wolseley may at its option either:
- (a) terminate this Agreement and the hiring of the Equipment (at no cost to the Hirer), in which case Wolseley is not obliged to provide any Equipment, the Hirer is not obliged to pay any Hire Charges or other amounts under this Agreement, and any deposit (or relevant part thereof) paid by the Hirer shall be returned: or

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- (b) replace the Equipment with equipment of the same or similar specification, age and condition (subject to availability of equipment) and the replacement equipment shall be deemed to be 'Equipment' for the purposes of this Agreement, in which case the hiring of the Equipment shall be deemed to commence from the date of delivery or collection of the replacement equipment.
- 11.4 Except as set out in this clause 11 and subject to clause 11.7, the Equipment is not provided with any other term, representation, warranty, condition or undertaking (whether express or implied by statute, common law or otherwise) concerning the condition, performance, quality description, hiring, possession, state, transportation, suitability, use or fitness for purpose of the Equipment, and all other terms, representations, warranties, conditions or undertakings expressed to be implied by statute, common law or otherwise are excluded to the full extent permitted by law.
- 11.5 Without prejudice to clause 11.7, Wolseley's maximum aggregate liability for breach of this Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed an amount equal to the total Hire Charges due and payable under this Agreement.
- 11.6 Without prejudice to clause 11.7, Wolseley shall not be liable under this Agreement for any loss of profit, loss of revenue, loss of business, loss of use of the Equipment or any asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities to any third party, or any indirect or consequential loss or damage, in each case, however caused, even if foreseeable.
- 11.7 Nothing in this Agreement shall exclude or limit in any way the liability of Wolseley in relation to fraud or fraudulent misrepresentation, any death or personal injury arising from the negligence of Wolseley or its employees or any other liability which cannot be excluded by law.
- 11.8 Wolseley shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 12 Indemnity**
- 12.1 The Hirer shall indemnify Wolseley and keep Wolseley indemnified on demand against all losses, charges, damages, legal expenses (on a full indemnity basis), proceedings, judgements and liabilities directly or indirectly incurred by Wolseley:
- (a) by reason of any failure by the Hirer to comply with any of its obligations under this Agreement;
- (b) by reason of any loss, injury or damage suffered by any person in connection with the Equipment during the Risk Period;
- (c) in respect of all loss or damage to the Equipment (insofar as Wolseley shall not be reimbursed for the same out of any proceeds of insurance in respect of the Equipment) occurring during the Risk Period regardless of the cause of the loss or damage;
- (d) in respect of the affixation or removal of the Equipment to or from the land or buildings at which they are located; and
- (e) for any claim or action made against Wolseley by any third party in connection with any property or items which do not belong to Wolseley but which have been returned to Wolseley with the Equipment, whether attached to the Equipment or not.
- 13 General**
- 13.1 Wolseley shall be entitled to assign or transfer all or any of its rights under this Agreement without the consent of the Hirer. The Hirer shall not assign, transfer, hold on trust or otherwise dispose of any of its rights and/or obligations under this Agreement.
- 13.2 Where the Hirer comprises more than one person, each person shall be jointly and severally liable under this Agreement.
- 13.3 Any delay or failure of Wolseley to exercise any right or remedy shall not constitute a waiver of it or them and any of Wolseley's rights or remedies may be enforced separately or concurrently with any other right or remedy now or in the future accruing to Wolseley to the effect that such rights are cumulative and not exclusive of each other.
- 13.4 If any term or provision of this Agreement shall to any extent be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining terms or provisions (and any other application of the said terms and provisions) shall not in any way be affected or impaired as a result.
- 13.5 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract. Nothing in this clause 13.5 shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- 13.6 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.7 Any written communication under this Agreement served by either party shall be sufficiently served if sent by prepaid post or delivered by hand to the address of the receiving party and, if sent by post, shall be deemed to be received by the receiving party 48 hours after the time of posting and at the date of delivery if delivered by hand.
- 13.8 Neither party shall, during and after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature.
- 13.9 The supply of any goods (including, without limitation, equipment or tools) and/or the provision of any services (including, without limitation, calibration or repair services) by Wolseley to the Hirer shall be subject to the Wolseley UK Conditions of Business.
- 13.10 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and nothing in this Agreement confers or purports to confer on any third party any benefit or right to enforce any term of this Agreement. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement. Nothing in this clause 13.10 shall restrict the rights of any assignee of Wolseley's rights under this Agreement or successor of Wolseley.
- 13.11 References in this Agreement to any statute, statutory instrument, regulation or order shall be deemed to be a reference to that statute, statutory instrument, regulation or order as amended, varied or replaced from time to time.
- 13.12 This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- 13.13 This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England to settle any disputes (including any non-contractual disputes) arising out of or in connection with it.