



Equipment Hire Agreement

APPLICATION

1 (1) In these Conditions, unless the context otherwise requires:-

"Agreement" means this agreement for the hire of the Equipment

"Company" means BAC Corrosion Control Limited (Company registration no. 1394643)

"Equipment" means the equipment or other items described overleaf and includes any or any part of them and all additions and accessories to and replacements and renewals of that equipment or those items made on, before or after the date of this Agreement

"Event" means any one occurrence or all occurrences of a series consequent on or attributable to one source or original cause

"Group Policy" means any insurance policy for public and product liability maintained for the group of which the Company is a member under which the Company is insured

"Hirer" means the person so described overleaf

"Local Policy" means any insurance policy for public and product liability maintained by the Company (excluding any cover available to it under any Group Policy)

"person" includes any body corporate or unincorporate

"Product Liability" means legal liability for accidental loss of or damage to any material property and/or accidental death of or personal injury to any person (except for any Company employee where it arises out of and in the course of employment) caused by any defect in the Equipment or any other item supplied or hired by the Company

"Pollution" means pollution or contamination of any building or other structure, land or water or the atmosphere caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place other than in the United States of America or Canada

"Property Damage" means damage to or loss of any material property but excluding any Pollution

"writing" includes facsimile transmission and other electronic means of communication

Words denoting the singular only include the plural and vice versa

(2) These Conditions, the terms overleaf and any special conditions agreed to in writing by the Company constitute the entire agreement for the hire of the Equipment and supersede any terms or representations referred to in the Company's literature or elsewhere. If any terms overleaf and/or any special conditions conflict with these Conditions, the terms overleaf and/or special conditions will prevail



HIRE

2 (1) The Company hereby hires the Equipment to the Hirer on the terms and conditions of these Conditions, the terms and conditions specified overleaf and any special conditions

(2) The Equipment will be hired for the hire period specified overleaf, (subject to paragraph 11). All transport, setting up and operating costs arising after the Equipment has been delivered or made available for collection will be borne by the Hirer

(3) The Company will use its reasonable endeavours to deliver the Equipment or, as the case may be, make it available for collection by or for the Hirer at the place of delivery or collection specified overleaf on the date specified overleaf but will not incur any liability whatsoever in the event of any delay

(4) The risk of any loss, theft or destruction of or damage to the Equipment will pass to the Hirer when it is delivered to or collected by or on behalf of the Hirer and will remain with it until the Equipment is delivered up to the Company in accordance with this Agreement

RENTALS

3 (1) The Hirer shall pay to the Company in advance during the term of this Agreement the rentals specified overleaf (together with Value Added Tax at the applicable rate), the first such rental payment to be made on the date of this Agreement and subsequent payments to be made at the consecutive intervals specified overleaf without prior demand by the Company

(2) If all or any of the Equipment is not delivered up to the Company on the expiry of the hire period specified overleaf or the termination of this Agreement, without prejudice to the Company's other rights and at its request the Hirer will pay to the Company as recompense for the continued use of that Equipment an amount equal to the rental payable under this Agreement in respect of the Equipment concerned, apportioned on a pro rata basis, for each day that the Hirer is in default in delivering up that Equipment. This sub-paragraph will not give the Hirer any right to the continued use or possession of the Equipment

(3) The Company will render a VAT invoice in respect of rental payments made by the Hirer within fourteen days of receipt of the relevant payment. All rental payments shall be paid to the Company at its premises specified overleaf or at such other address as the Company may from time to time specify and all payments made by post shall be at the risk of the Hirer

(4) Payment of rentals will be due without previous demand or invoice and must be made so as to be received by the Company in cleared funds on their due date. Time will be of the essence in respect of the payment of all sums due hereunder

(5) Any payments made by the Hirer to the Company may be appropriated by the Company in or towards satisfaction of any sums due or owing to the Company under this Agreement notwithstanding that the Hirer may have purported to appropriate such payments in some other way



(6) If the parties agree in writing that further equipment shall be hired to the Hirer under the terms of this Agreement such equipment shall be added to the list of Equipment specified overleaf and the rentals payable under clause 3(1) will be varied as may be agreed in writing

HIRER'S COVENANTS

4 The Hirer agrees with the Company that during the term of this Agreement and, if this Agreement shall expire or be determined for any reason, until the Equipment is delivered up to the Company in accordance with the terms of this Agreement it shall :-

(i) pay without demand all rentals and all other sums payable by it under this Agreement together with Value Added Tax thereon on or before the due date for payment and pay interest on overdue rentals and other payments (or the balance for the time being outstanding) at the rate of 4% above the base rate (or, if it shall be replaced, its successor) from time to time of Lloyds TSB Bank PLC until payment in full to the Company in cleared funds, such interest to accrue on a daily basis and to be payable both before and after any judgment

(ii) keep and maintain the Equipment and all parts thereof in good order, repair and condition (fair wear and tear only excepted) and not cause or permit any of the Equipment to be defaced

(iii) not without the Company's prior written consent cause or permit any repair, maintenance, servicing, alteration, addition or modification to be carried out or made in respect of any of the Equipment or any part of or component in any of the Equipment to be replaced or any adjustment to be made to the operation of the Equipment except through proper use of the controls in accordance with the instructions provided with the Equipment or by the Company

(iv) be responsible for the loss, theft or destruction of or for any damage to the Equipment occasioned in any manner or by whomsoever or by any cause whatsoever whilst the Equipment is at the Hirer's risk (other than as a direct result of fair wear and tear or any act of the Company or any person for whom it is vicariously liable) and fully and effectually indemnify the Company in respect of all claims, proceedings, costs, expenses, loss, damage and liabilities incurred by the Company arising directly or indirectly from any such loss, theft destruction or damage

(v) ensure that the Equipment is operated at all times safely and in a skilful and proper manner and with all due care and for the purpose for which it was designed and in accordance with the instructions and recommendations accompanying the Equipment or provided by the Company and by persons who are competent to operate the same

(vi) keep the Equipment at all times in the possession and control of the Hirer

(vii) punctually pay and discharge all rents, rates, taxes, charges and outgoings payable in respect of any premises in which the Equipment may for the time being be kept or placed and on demand produce to the Company the last receipts therefor

(viii) notify the Company of any change in the Hirer's address and at the Company's request promptly inform it of the whereabouts of the Equipment

(ix) procure that the Company and/or any person authorised by the Company shall be allowed at all reasonable times to enter upon any premises or place in which the Equipment is for the time



being kept for the purpose of inspecting and examining the condition of the Equipment or repairing, servicing, maintaining or replacing it

(x) obtain and comply with all necessary licences and permissions for the use of the Equipment and not use the Equipment or cause or permit it to be used contrary to law or any regulation or bye-laws and ensure that the Equipment is used exclusively for the lawful purposes of the Hirer's business and operated without avoidable risk to the environment

(xi) in the event of any default by the Hirer under the terms of this Agreement pay to the Company on demand on a full indemnity basis all costs, expenses, (including all legal, storage and other charges and expenses), loss, damage and liabilities incurred by or on behalf of the Company in ascertaining the whereabouts of the Hirer and/or of the Equipment or of preserving, storing, insuring or taking possession of the Equipment and of any legal proceedings by the Company to enforce the provisions of this Agreement

(xii) keep the Equipment free from any lien and any distress, execution or other legal process and not let, lend, sell, assign, transfer, charge, encumber, dispose of or otherwise deal with or part with the possession or control of the Equipment or purport to do so

(xiii) not assign, transfer, charge, let or sub-let or otherwise deal with all or any of the Hirer's rights or obligations under or in relation to this Agreement

(xiv) ensure that insofar as the Equipment is affixed to any land or buildings such Equipment shall be capable of being removed without material injury to the said land or building and take such steps as may be necessary to ensure that title to the Equipment shall not pass to the owner or lessor of any such land or building or any third party

(xv) procure that no plates, identification or trade marks, labels or signs on or fixed to the Equipment (including any stating that the Company is the owner of the Equipment) are removed, altered, obliterated or defaced and not add or erect any painting, lettering or advertisement to or on the Equipment

(xvi) fully and effectually indemnify the Company against all claims, proceedings, costs, expenses, loss, damage and liabilities made against or incurred by the Company by reason of or in connection with any loss, death, injury or damage (other than death or personal injury occasioned by the negligence of the Company (as defined in section 1 of the Unfair Contract Terms Act 1977)) suffered by any person from the presence of the Equipment and/or the use of the Equipment whilst it is at the Hirer's risk and/or any act neglect or omission of the Hirer, its employees or agents

INSURANCE

5 (1) The Hirer shall at its cost forthwith insure the Equipment and keep it insured for as long as it is at the Hirer's risk for not less than the full replacement value of the Equipment (as determined from time to time by the Company) with such persons and under such a form of policy against loss or destruction or damage by accident, fire, theft and other risks usually covered by insurance in the type of business for which the Equipment is for the time being used (and such other or additional risks as the Company may from time to time require) as may be approved by the Company. Such policy shall be either in the joint names of the Hirer and the Company or be endorsed with a memorandum of the Company's interest in the Equipment as the Company may



determine and shall provide that no excess or deductible shall apply in respect of any claim made under it and that no payment will be made to the Hirer under the policy until the Owner's interest under the policy has been fully discharged

(2) The Hirer shall punctually pay all premiums payable under the said policy, produce the receipt for such payments to the Company on demand and do everything necessary to maintain the said policy in full force and effect and not do anything whereby the policy would be vitiated

(3) The policy together with the receipts for the premiums payable thereunder shall if so required by the Company during the continuance of this Agreement be delivered to and retained by the Company. If the Hirer shall default in effecting such insurance or paying any premium in respect of it, without prejudice to its other rights, the Company may effect and maintain such insurance itself and pay all premiums payable under it or, as the case may be, pay the premiums which the Hirer has not paid in which event the Hirer will repay all such premiums to the Company on demand. The Hirer will not use or cause or allow the Equipment to be used for any purpose not permitted by the terms and conditions of any insurance effected pursuant to this sub-clause or otherwise do or cause or allow to be done anything whereby any such insurance might be invalidated

(4) The Hirer hereby irrevocably appoints the Company its agent for the purposes of negotiating with the insurers and receiving all monies which may become payable under any policy or policies covering the Equipment and for the purposes of instituting proceedings for the recovery of such monies and giving a full and final discharge to the insurers on payment of such monies

(5) If any of the Equipment is lost, stolen, destroyed or damaged the Hirer will immediately notify the Company thereof and at the Company's request provide full particulars of the circumstances in which the Equipment was lost, stolen, destroyed or damaged to the extent they are known to the Hirer

(6) If the Equipment is damaged during the continuance of this Agreement and in the opinion of the insurers it is economic that such damage be made good all such insurance monies payable under the insurance policy effected pursuant to this paragraph 5 shall be applied in making good the said damage

(7) If any of the Equipment is lost, stolen, destroyed or damaged to such an extent as to be in the opinion of the insurers incapable of economic repair this Agreement will determine as regards the Equipment concerned on the date on which the Company first becomes aware of the same (but will continue in full force and effect in respect of the other Equipment) and the insurance monies payable under such policy shall at the option of the Company :-

(i) be applied so far as possible in replacing the Equipment concerned with equipment of similar type and quality in which event the new equipment shall be let to the Hirer under the terms of this Agreement; or

(ii) be paid to the Company in or towards discharging the Hirer's liability to the Company at the date of such payment in relation to and compensating the Company for the loss, theft or destruction of or damage to the Equipment concerned any surplus being paid to the Company, but if the insurance monies paid to the Company and applied under this paragraph are insufficient to discharge the Hirer's said liability and to compensate the Company as aforesaid the amount of the deficiency shall forthwith be paid by the Hirer to the Company



(8) Except as stated in paragraph 5(7) the loss, theft or destruction of or damage to the Equipment will not affect the continuance of this Agreement or the Hirer's liability for payment of rentals

THE EQUIPMENT

6 (1) The Hirer agrees that :

(i) no condition, warranty, representation or stipulation of any kind has been made by or on behalf of the Company in respect of the Equipment; and

(ii) the Hirer has been invited to inspect and test the Equipment prior to the signing of this Agreement and to make all other relevant enquiries concerning it and the Hirer will be deemed to have satisfied itself as to the condition, quality, description and all other aspects of the Equipment; and

(iii) all warranties, conditions, representations and stipulations express or implied statutory or otherwise relating to the condition of the Equipment or its quality or suitability or fitness for the particular or any purpose for which it is or may be required or the Equipment's compliance with any description or sample (except for any given fraudulently) are hereby excluded to the fullest extent permitted by law; and

(iv) the Hirer will not be entitled to any reduction of rentals in respect of any period during which the Equipment for any reason whatsoever is unserviceable or out of order or unusable (except to the extent that that arises from any breach of this Agreement by the Company and for any period when it cannot be used because it is being maintained or serviced by the Company under paragraph 6(2)) and the Company will not be obliged to supply any replacement Equipment in any circumstances nor be liable for any loss, liability or damage of any description whatsoever (including without limitation loss of profile or business or any liability to any third party or any indirect or consequential loss or damage) suffered by the Hirer as a result of the Equipment being unusable, out of order or unserviceable

(vi) it accepts as reasonable the exclusions from liability contained in this paragraph 6(1)

(2) All servicing and maintenance of the Equipment due to fair wear and tear will be carried out by or for the Company at its expense. The Hirer will immediately notify the Company of any fault in the Equipment or any failure to operate properly and provide the Company with such information concerning the fault or failure as it reasonably requests. Any repair or replacement of the Equipment or any part of it arising from any damage to the Equipment for which the Hirer is responsible under paragraph 4 will be carried out by or for the Company at the Hirer's cost and the Hirer will on demand indemnify the Company in respect of all costs, charges and expenses it incurs in relation to any such repair or replacement. The Hirer will promptly deliver the Equipment to such place as the Company stipulates or make it available to the Company for collection to enable any such servicing, maintenance, repair or replacement to be effected

DEPRECIATION



7 The burden of depreciation resulting from fair wear and tear of the Equipment will fall upon and the right to claim all relief from taxation and capital allowances in respect of the Equipment or any investment grant or other similar grant or relief will vest in the Company and the Hirer undertakes not to claim any such relief, allowance or grant

OWNERSHIP

8 The Equipment will remain the property of the Company and the Hirer will have no right or interest in it except than as the hirer of it under this Agreement

HIRER'S ACKNOWLEDGEMENT AND WARRANTY

9 (1) The Hirer agrees that each of its obligations and covenants under this Agreement will for all purposes be fundamental conditions of this Agreement and that the time shall be of the essence in respect of any payment due from the Hirer in relation to this Agreement to the intent that if the Hirer fails to pay any rental or other sum payable under or in relation to this Agreement on the due date or any other event specified in paragraph 11(1) hereof shall occur the Company will be entitled to treat such failure or breach as a repudiation of this Agreement by the Hirer

(2) The Hirer warrants to the Company that in hiring the Equipment it is not dealing as a consumer (as defined in the Unfair Contract Terms Act 1977)

LIABILITY

10(1) The Company will not be liable in contract or in tort (including negligence) or in any other way for any consequential or indirect loss, liability or damage nor for any other claim for consequential compensation whatsoever (including loss of profit [or data], costs or expenses) arising howsoever in connection with this Agreement or the Equipment

(2) Subject to paragraph 10(4) the Company's liability for all compensation for Property Damage or Pollution resulting from any act or omission or negligence on the part of the Company arising in connection with the Contract shall be limited in aggregate to damages of an amount equal to:-

(a) , in the case of all and any Property Damage caused by the Equipment in any one period of the Company's insurance for Product Liability under the Local Policy, £500,000, less the Company's total liabilities in relation to all other claims for Product Liability made in respect of that period and which are covered by such insurance

(b) , in all and any other cases for Property Damage, £500,000 in relation to any Event occurring in any one period of the Company's insurance for such Property Damage under the Local Policy, less the Company's total liabilities in relation to all other claims arising from or attributable to that Event made in respect of that period and which are covered by such insurance



(c) , in the case of all and any Pollution (including all loss or damage directly or indirectly caused by Pollution), £500,000, in relation to any Event occurring any on period of the Company's insurance for such Pollution under the Local Policy, less the Company's total liabilities in relation to all other claims for Pollution arising from or attributable to that Event made in respect of that period and which are covered by such insurance. The Company shall have no liability for any other pollution or contamination which may occur

(3) Excluding its liability referred to in paragraph 10(2) the Company's aggregate liability whether arising in contract or tort (including negligence) or otherwise howsoever for any loss, cost, damage, injury or liability (whether consequential or indirect or otherwise) resulting from or in connection with this Agreement will be limited to damages of an amount equal to the aggregate amount of the rentals payable under this Agreement

(4) The limits on the Company's liability in paragraphs 10(2) (a) – (c) shall be exclusive of its legal liability to the Customer for legal costs and expenses relating to the liability concerned, to the extent that they are covered by the Company's insurance and shall be increased by an amount equal to the sums received by the Company under the Group Policy for all claims made by the Customer in respect of the liabilities referred to in the relevant paragraph. The limit on liability in paragraph 10(3) shall be inclusive of such costs and expenses

(5) Provided that the insurance is available to it generally in the market on reasonable commercial terms, the Company will maintain during the continuance of this Agreement and for at least 6 calendar months after it has come to an end insurance cover a Local Policy public and product liability insurance in respect of the liabilities referred to in paragraph 10(2) for not less than the respective amounts stated in that paragraph

TERMINATION

11(1) If the Hirer shall during the term of this Agreement:-

(i) fail to pay any rental on the due date (whether or not any previous demand for payment has been made by the Company) or to pay on the due date any other sum payable by it under or in relation to this Agreement; or

(ii) makes any arrangement or composition with its creditors generally or (being an individual) has an interim order (within the meaning of the Insolvency Act 1986) or any other order under any legislation relating to bankruptcy or insolvency or their equivalent made against him or becomes bankrupt or its equivalent or (being a firm or body corporate or unincorporate) enters into compulsory or voluntary liquidation or the equivalent or shall be dissolved or have a receiver and/or manager, administrative receiver, supervisor or administrator or any other person having similar powers or function appointed over it or any part of its assets or undertaking or if any distress or execution shall be levied or threatened upon the Equipment or upon any of the Hirer's property or if any judgment against the Hirer shall remain unsatisfied for more than 7 days or if the Hirer shall abandon the Equipment or cease or threaten to cease carrying on business or shall be unable to pay its debts within the meaning of sections 123 or 268 of the Insolvency Act 1986; or

(iii) fail to observe or perform any of the terms or conditions of this Agreement (express or implied) or commit or suffer to be committed any breach whatsoever of this Agreement then in each and every such case the Hirer will be deemed to have repudiated this Agreement and the



Company may on the occurrence of any such event or at any time within 3 months of the Company becoming aware of it accept that repudiation and by written notice to the Hirer terminate this Agreement forthwith and the hiring constituted by it

(2) The expiry or determination of this Agreement howsoever arising will be without prejudice to the rights of either party accrued up to the date of expiry or determination

(3) Where this Agreement is determined or comes to an end pursuant to this paragraph 11 and the Company suffers loss as a result of being unable to relet the Equipment at a rental as much as that payable under this Agreement for the whole period between the date of such determination or coming to an end and the date on which this Agreement would have expired by effluxion of time if it had not been so determined or come to an end the Company shall be entitled to recover the amount of such loss from the Hirer without prejudice to its other rights and remedies and the Hirer shall pay the amount of such loss to the Company on demand

(4) On the expiry or earlier termination of this Agreement the Hirer shall if required by the Company at the Hirer's own risk and cost deliver up the Equipment to the Company at the Company's premises specified overleaf or at such other address as the Company may specify or if not so required shall hold the Equipment available for collection by the Company or its agents and the Company or its agents may without notice retake possession of the Equipment and are hereby irrevocably authorised for that purpose to enter upon any land or buildings of the Hirer on or in which the Equipment is or is believed by the Company or its agents to be situated and if any of the Equipment is affixed to such land or buildings the Company or its agents shall be entitled to sever the same therefrom and to remove the Equipment so severed and the Hirer shall be responsible for all damage caused to the land or buildings by such removal. The Hirer shall notify the Company forthwith in writing if it sends the Equipment for return to the Company

MISCELLANEOUS

12(1) No forbearance or indulgence by the Company in enforcing any of the provisions of this Agreement will in any way affect or prejudice the rights or powers of the Company under this Agreement or operate or be deemed to be a waiver of any breach of such provisions by the Hirer

(2) No right or remedy conferred in this Agreement on or reserved to the Company will be treated as exclusive of any other right or remedy provided in this Agreement or by law or equity but each shall be cumulative of every other right or remedy and may be enforced concurrently or from time to time

(3) This Agreement and any agreed document executed by either or both of the parties simultaneously herewith sets out the entire Agreement between the parties in relation to the Equipment and no variation or amendment thereto (including without limitation any additional equipment which is to be subject to this Agreement and any variation of the rental payable) will be valid or of any effect unless evidenced in writing and signed by an authorised representative of the Company and by or on behalf of the Hirer

(4) The Company will be entitled at any time to assign all or any of its rights, benefits and liabilities under or in relation to this Agreement and/or its interest in the Equipment to any third party



CORROSION CONTROL

(5) This Agreement will be governed by the laws of England and all claims and legal proceedings arising in connection with this Agreement will be subject to the non-exclusive jurisdiction of the Courts of England

(6) The provisions of this Agreement are severable, and if any provision or part of it is held to be invalid or unenforceable by any court or other body of competent jurisdiction that will not affect the other provisions or the remainder of the relevant provision

(7) The Company will not have any liability to the Hirer if the Company fails to perform or is delayed in performing any of its obligations under this Agreement as a result of any event or circumstances beyond its reasonable control

(8) The Hirer hereby waives all and any future claims and rights of set-off against any rentals or other sums payable under or in relation to this Agreement and agrees to pay all such amounts regardless of any set-off, equity or cross-claim available to the Hirer against the Company

(9) Any notice to be given by either party hereunder shall be in writing and shall be effectively served if it is sent by first class pre-paid post or delivered by hand to their respective addresses set out overleaf or such other address for service as may have been notified by the addressee to the other party for the purposes of and in accordance with this paragraph