

# PENNY BANKS LTD TERMS & CONDITIONS

## 1. INTERPRETATION

In these Conditions the following words have the following meanings:

'Company' means Penny Banks Ltd;

'Conditions' means the terms and conditions set out in this document;

'Contract' means the contract for hire of the Hire Goods between the Customer and the Company in accordance with these Conditions;

'Customer' means the person, firm, company or other organisation specified in the Order Confirmation;

'Force Majeure' means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, acts or omissions of sub-contractors, lockouts, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions, vehicular failure or failure of a transport network (including but not limited to traffic jams) and any other similar events;

'Hire Goods' means the goods specified in the Order Confirmation;

'Hire Period' means the period commencing when the customer receives the Hire Goods and ending upon the earlier of (i) the physical return of the Hire Goods by the Customer into the Company's possession; or (ii) the physical repossession or collection of Hire Goods by the Company;

'Order Confirmation' means the Company's written confirmation of the Customer's order;

'Rental Charges' means the charges for the Hire Goods Specified in the Order Confirmation;

'Services' means the services and/or work (if any) to be performed by the Company for the Customer in conjunction with the hire of the Hire Goods including any delivery and/or collection service for the Hire Goods.

## 2. BASIS OF CONTRACT

**2.1** A contract will come into effect between the Company and the Customer on the basis of the Order Confirmation from the earlier of the Customer's written or email acceptance that the details in the Order Confirmation are correct or the Company's delivery or release of the Hire Goods to the Customer. The Contract will be governed by these Conditions and any prior written or oral representation of the Company or its authorized representatives to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any order, confirmation of order, specification or another document.

**2.2** Standard furniture orders shall be signed off by the Customer no less than 14 working days prior to the required delivery date; and for bespoke items no less than 28 working days prior to the delivery date. The Company

reserves the right to levy a 20% surcharge for orders that are not signed off by the due deadline.

**2.3** Neither the Company nor the Customer may alter the terms of the Contract without the agreement of the other party.

### **3. PAYMENT**

**3.1** The amount of any Rental Charges and/or charges for any Services shall be as set out in the Order Confirmation. Where specified in the Order the Rental Charges and/or charges for the Services or full payment of such sums in advance of the Company delivering or releasing the Hire Goods to the Customer

**3.2** The Customer shall pay the Rental Charges, charges for any Services, and/or any other sums payable under the Contract to the Company at the time(s) provided in the Order Confirmation. If payment is to be made in instalments the Company reserves the right to suspend its ongoing performance of its obligations until any outstanding payment is received.

**3.3** The Company's prices are, unless otherwise stated, exclusive of any applicable VAT, which shall be added to the relevant charges payable by the Customer at the prevailing rate.

**3.4** Any sums due under these Conditions for which prepayment is not required shall be paid within 14 days of the Customer's receipt of an invoice for the applicable sum from the Company.

### **4. RESPONSIBILITY, OWNERSHIP AND INSURANCE**

**4.1** The Customer shall be responsible for the Hire Goods immediately from when they leave the physical possession or control of the Company, being the time when they are loaded into the Customer's vehicle or unloaded from the Company's vehicle.

**4.2** Responsibility for the Hire Goods will not pass back to the Company from the Customer until the Hire Goods are back in the physical possession of the Company, being the time when they are unloaded from the Customer's vehicle or loaded onto the Company's vehicle.

**4.3** The Customer undertakes to indemnify the Company against any third-party claims for injury and/or negligence whilst the Hire Goods are in the possession and use by the Customer howsoever such claims may arise.

**4.3** Ownership of the Hire Goods remains at all times with the Company. The Customer has no right, title or interest in the Hire Goods and must not sell or assert any right to possess the Hire Goods other than for the purpose for which they are provided for hire by the company. The customer shall not hire or release possession of the Hire Goods to any third party without the Company's prior written consent, which shall not be unreasonably withheld. The Customer shall in such circumstances remain responsible for the Hire Goods unless such third party enters into a direct agreement with the Company.

**4.4** Where provided in the Order Confirmation the Company may require the Customer to insure the Hire

Goods on such reasonable terms and for such reasonable risks as the Company specify. The proceeds of any such insurance shall be held by the Customer in trust for the Company and be paid to the Company on demand. The Customer must not compromise any claim in respect of the Hire Goods and/or any associated insurance without the Company's prior written consent.

## **5. DELIVERY, COLLECTION AND SERVICES**

**5.1** It is the responsibility of the Customer to collect the Hire Goods from the Company and return them to the Company at the end of the Hire Period, in each case in accordance with the times provided in the Order Confirmation. If the Company agrees to deliver or collect the Hire Goods to and/or from the Customer, it will also at its standard delivery cost as provided in the Order Confirmation and such delivery and/or collection will form part of the Services. If the Company specifies an A.M. delivery or collection, this shall take place between the hours of 8am and midday. If the Company specifies a P.M. collection or delivery, this shall take place between midday and 6pm. The Company may charge additional sums as specified in the Order Confirmation or as otherwise notified to the Customer if the Customer requests a collection or delivery time outside of those specified above or at weekends, or on bank holidays. Where a customer has requested a timed delivery there will be an allowance of 30 minutes either side of such time due to traffic or unforeseen circumstances.

**5.2** The Customer shall be solely responsible for any instructions given by the Customer to any person performing Services while they are on the Customers premises and for any damage which occurs as a result of such persons following the Customers instructions except to the extent that the persons performing the Services are negligent.

**5.3** The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to power supplies and utilities for the Company to carry out the Services. The Customer will ensure that the site where the Services are to be performed is safe and is, where necessary, cleared and prepared before the Services are due to commence.

**5.4** The Customer must check all Hire Goods as soon as practicable after delivery and report any damages, faults, shortages or discrepancies to the Company within 24 hours of delivery by either telephone or email. The Company shall use reasonable endeavours to promptly replace any damaged Hire Goods or make up any shortages or discrepancies.

**5.5** Where the Hire Goods are to be delivered by the Company the Customer (or an appropriate representative) must be present when the Hire Goods are delivered by the Company and sign for delivery of all such Hire Goods.

**5.6** Should the Company be unable to complete the

installation within the allocated period of time, as determined by the schedule of works, for reasons out of the Company's control, a rate of £45 per hour can be charged for excess time.

**5.7** The Customer must inform the Company on request whether any restrictions or special requirements as regards vehicle access for the purpose of delivery or collection applies. In the event that the Customer requests the Company to deliver or collect Hire Goods from an area which is not a designated loading/unloading area the Customer shall be responsible for and shall reimburse the company in respect of any parking fines or charges incurred by the Company.

**5.8** The Company agrees to collect the Hire Goods to make such Hire Goods available for collection at the same location to which they were originally delivered. The Company reserves the right to make an additional charge in respect of collection from a location other than the location to which the Hire Goods were originally delivered.

**5.9** In circumstances where the Company agrees to collect the Hire Goods, the representative of the Company will ask the Customer to sign a collection note. For the avoidance of doubt, the Customer's signature of a collection note is an acknowledgement that the Company has been to collect Hire Goods, not that all Hire Goods have been collected by the Company, and does not indicate the acceptable condition of the Hire Goods or otherwise.

**5.10** The Company reserves the right to supply substitute items of equivalent quality to the Hire Goods if any of the Hire Goods are unavailable for reasons beyond the Company's reasonable control. In such circumstances the Company shall notify the Customer as soon as reasonable practicable to discuss alternative options.

## **6. CARE OF HIRE GOODS**

The Customer shall:

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

**6.1.2** Notify the Company as soon as practicable after any breakdown, loss and/or damage to the Hire Goods'

**6.1.3** Take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks, and store the Hire Goods in accordance with any instructions provided to it or where none as appropriate according to the nature of the Hire Goods;

**6.1.4** Notify the Company of any change of its address and upon the Company's request provide details of the location of the Hire Goods;

**6.1.5** Permit the Company at all reasonable times to inspect the Hire goods, including procuring reasonable

access to any property where the Hire Goods are situation;

**6.1.6** Keep the Hire Goods at all times in its possession and control and not remove the Hire Goods from the United Kingdom without the prior written consent of the Company;

**6.1.7** Be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hire Goods required by any legislation, best practice and/or operating instructions except to the extent that the Company has agreed to provide them as part of any Services;

**6.1.8** Not do, or omit to do, anything which will or may be deemed to invalidate any policy of insurance related to the Hire Goods which is notified to the Customer;

**6.1.9** Not continue to use Hire Goods where they have been damaged and notify the Company immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods. Other property and /or injury to any person;

**6.1.10** Where the Hire Goods require fuel, oil and /or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Hire goods are properly installed by a qualified and competent person.

**6.1.11** Where the Customer fixes a graphic wrap or selfadhesive logo/lettering to the Hire Goods, the adhesive must be of the low-tack variety so that the material may be easily removed at the end of the Hire Period. Any Customer not using such material, which results in the Company needing to take effort to remove it and remedial work to restore the furniture before the next hire, then the Customer will be incurring a charge to cover this additional work.

**6.1.12** No drilling/cutting/stapling into the Hire Goods is permissible without the prior authority of the Company. Any Customer damaging the Hire Goods in this way will be charged the full cost of making good; or where, in the opinion of the Company, repair is not possible, the cost of replacement of all such damaged items.

**6.2** The Hire Goods must be returned by the Customer or made available for collection by the Company in good working order and condition (fair wear and tear expected) and in a clean condition together with all insurance policies licenses, registration and other documents relating to the Hire Goods in the Customer possession.

## **7. BREAKDOWN**

**7.1** Allowance will be made in relation to the Rental Charges to the Customer for any non-use of the Hire Goods due to breakdown caused by the development of any inherent fault and/or fair wear and tear on condition that the Customer informs the Company as soon as practicable of the breakdown.

**7.2** The Company will at its own costs carry out all routine maintenance and repairs to the Hire Goods during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Hire Goods

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

**7.3** The customer must not repair or attempt to repair the Hire Goods unless authorized to do so in writing by the Company.

## **8. LOSS OR DAMAGE TO THE HIRE GOODS**

**8.1** If the Hire Goods are returned in a damaged, unclean and/or defective state, except where due to fair wear and tear, an inherent fault in the Hire Goods and/or the negligence of the Company, the Customer shall be liable to pay the Company for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire and to pay Rental Changes at the rates provided in clause 3.1 calculated pro rata as necessary), until such repairs and/or cleaning have been completed. The Company shall use reasonable endeavours to complete such repairs and/or cleaning as soon as practicable.

**8.2** If the Hire Goods are subjected to inappropriate use, are used outdoors, or in a situation where they may be damaged by condensation or water capillary action from damp ground or surroundings, without the prior consent and written approval of the Company, and the Hire Goods suffer damage as a consequence, the Customer shall be liable to pay the full replacement cost of all damaged items.

**8.3** The Customer shall pay the Rental charges for the Hire Goods up to and including the date it notifies the Company that some or all of the Hire Goods have been lost, stolen and/or damaged beyond economic repair. From the date until the Company has replaced such Hire Goods the Customer shall pay as a genuine pre-estimate of lost rental, a sum as liquidated damages being equal to two thirds of the Rental Charges that would have applied for such Hire Goods for that Period. The Company shall use its reasonable commercial endeavours to purchase replacement for such Hire Goods as quickly as possible.

**8.4** If the Customer does not return any or all of the Hire Goods the Company shall notify the Customer of the nonreturned items prior to invoicing the Customer an amount equal to the full replacement cost of such sums due under clause 8.3 and in addition to any sums due under clauses 8.1. If non-returned items are subsequently found by the Customer prior to the Company having replaced and the Customer having paid for such items, it is the Customers' responsibility to return the items to the Company. Where it is necessary for the Company to collect these late returns the Customer will be charged an additional collection fee.

**8.5** The Company shall require 3 working days from receiving the Hire Goods back in their factory in which to inspect the goods prior to notifying the Customer of any loss or damage to the Hire Goods.

**8.6** The Company shall not accept any substitutes for lost or damaged Hire Goods supplied by the Customer unless agreed in writing by the Company.

## **9. TERMINATION BY NOTICE**

**9.1** If the Hire Period has a fixed duration, subject to the provisions of clauses 10 and 11 neither the Customer nor the Company shall be entitled to terminate the Contract before the expiry of that fixed period unless agreed in writing with the other party.

**9.2** If the Hire Period does not have a fixed duration either of the Customer or the Company may terminate the Contract upon giving to the other party any agreed or specified period of notice.

**9.3** If no period of notice has been agreed or specified the Customer may terminate the Hire Period by the physical return of the Hire Goods to the Company and the Company shall be entitled to terminate the Contract by giving not less than 14 days' notice to the Customer.

## **10. DEFAULT**

**10.1** If the Customer:

**10.1.1** Fails to make any payment to the Company when due;

**10.1.2** Breaches the terms of the Contract and, where the breach is capable of remedy, fails to remedy the breach within 14 days of receiving notice requiring the breach to be remedied;

**10.1.3** Persistently breaches the terms of the Contract;

**10.1.4** Provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

**10.1.5** Creates or purports to create any form of security over any Hire Goods, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors, applies for an interim moratorium in respect of claims and/or proceedings, or suffers any distress, execution or other legal process over its property, or (where an individual) has a bankruptcy, petition presented against him/her or takes or suffers any similar action in any jurisdiction;

**10.1.6** Being a company, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets or takes or suffers any of its assets or takes or suffers any similar action in any jurisdiction;

Then the company may without prejudice to any other remedies, exercise any or all of the rights set out in clause 10.2 below.

**10.2** If any of the events set out in clause 10.1 above occurs in relation to the Customer then:

**10.2.1** Except where the Customer is acting as a consumer the Company may enter, without prior notice, any premises of the Customer (or premises of third parties) where Hire goods owned by the Company may be and repossess any Hire goods;

**10.2.2** The company may withhold the performance of

any Service and cease any Services in progress under this and/or any other Contract with the Customer;

**10.2.3** The Company may immediately cancel, terminate and/or suspend without liability to the Customer the Contract.

**10.4** The Customer may terminate the Contract immediately by notice in writing to the Company if the Company is in material breach of the Contract and where remediable fails to remedy the breach within 14 days of its receipts of notice from the Customer requiring its remedy.

**10.5** Upon termination of the Contract under clause 9 or 10 the Customer shall immediately:

**10.5.1** Return Hire Goods to the Company or make the Hire Goods available for collection by the Company as requested by the Company, in each case in accordance with these Conditions; and

**10.5.2** Pay to the Company all sums outstanding for Rental Charges; charges for any Services and/or any other sums payable under the Contract.

## **11. CANCELLATION**

If the Customer decides to cancel the Hire Period prior to delivery the Company reserves the right to apply the following charges:

Notice period given -

Up to 5 days prior to delivery Full rental charges

Up to 10 days prior to delivery 50% rental charges

15 working days prior to delivery No charge

All cancellations must be confirmed in writing to the Company by letter or email. Where the Customer is a consumer the Company will pay an equivalent sum to the Customer if the Company cancels the Contract. On payment by either party of any sums due under this clause 11 the Contract shall terminate.

## **12. LIMITATIONS OF LIABILITY**

**12.1** Subject to clauses 12.2 and 12.4 if a party breaches the Contract, it shall not be responsible for any losses that the other party suffers as a result except those losses which is a foreseeable consequence of that breach.

**12.2** Neither party shall be responsible for loss of anticipated savings that results from its breach of Contract.

**12.3** Neither party's liability to the other party of breach of the Contract (including where due to negligence or for breach of section 13 of the Supply of Goods and Services Act 1982) will exceed five times the Rental Charges and charges for Services. This clause does not limit sums that may be payable under clause 8 of these Conditions.

**12.4** This clause 12 does not limit or exclude either party's liability for:

**12.4.1** Death or personal injury caused by its negligence;

**12.4.2** Fraud or fraudulent misrepresentation;

**12.4.3** (In the case of the Company) any breach of the obligations implied by the Supply of Goods and Services Act 1982 (other than breach of section 13 provided for

above in clause 12.3 for which liability is hereby excluded;  
or

**12.4.4** Any other liability that cannot be lawfully excluded or limited under applicable law.

### **13. EVENTS OUTSIDE A PARTY'S CONTROL**

**13.1** Neither party will be liable or responsible to the other party for any failure to perform, or delay in performance of, any of its obligations under these Conditions that is caused by Force Majeure.

### **14. GENERAL**

**14.1** Upon termination of the Contract the provisions of clauses 3.3, 3.5, 8, 10, 12 and 14 shall continue in full force and effect.

**14.2** If any court or competent authority decides that any provisions(s) of these Conditions is invalid, unlawful or unenforceable to any extent, such Conditions(s) will, to that extent only, be served from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

**14.3** If either party fails to insist that the other party performs any of its obligations under the Contract, or if a party does not exercise any of its rights or remedies under the Contract, that will not mean that the relevant party has waived such rights or remedies and will not mean that the other party does not have to comply with those obligations. If a party waives a breach by the other party, that will not mean that it will automatically waive any subsequent default by the other party.

The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties Act 1999 by any person that is not a party to it.

**14.5** All notices sent by either party to the other must be sent to the contract addresses set out in the Order Confirmation. Notices will be deemed received and properly serviced 24 hours after an email is sent or three days after the date of posting of any letter. In providing the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an email that the email was sent to the specified email address of the addressee.

**14.6** The Company will only use the personal information the Customer provides to the Company to provide the Services and perform its obligations under Contract. The Company will not pass Customer data to third parties with the exception that the Customer acknowledges and agrees that the Company may pass Customer data.

**14.7** The Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

## **15. REFUND POLICY**

Existing damage or defects to hire furniture must be advised to our delivery driver or site team at the point of delivery.

**15.1** The client has no right to refund if they have ordered the wrong hire item or if they have taken it but not used it. The only exception is if a 'special agreement' has otherwise been agreed upfront.

**15.2** If an item becomes faulty whilst on hire, we will endeavour to send a competent person to site to assess the situation. If possible, we will bring a replacement item to site and exchange the faulty item rather than attempt to repair it on site.

**15.3** Hire equipment should be returned clean and in the condition in which it was received. Any damage, missing parts or accessories will be assessed upon return to our factory and any charges along with photographic proof (where possible) will be notified to you within 7 days of collection. Repairs/cleaning will be charged as follows:-

Repair/cleaning time - £45.00 per hour

Replacement- 4 x the full hire price

**15.4** If we go to site and find that an item of furniture is 'unavailable' for collection then it will be deemed as still on hire until which time we either agree that it is lost, or it is returned to us. In these circumstances we will notify you of the items replacement value and will give you the opportunity to either settle the cost on account or return the item.