

## **Drive DeVilbiss Healthcare Limited**

### **Terms of Hire**

#### 1. INTERPRETATION

1.1 The following definitions apply.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** the date that the Lessee, or the Recipient, takes Delivery of the Equipment.

**Delivery:** the transfer of physical possession of the Equipment to the Lessee, or the Recipient, at the Site.

**Equipment:** the equipment set out in the Quotation, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

**Lessee:** the person hiring the Equipment from the Lessor, as detailed and agreed in the Quotation.

**Lessor:** Drive DeVilbiss Healthcare Limited whose company registration number is 04301005 and registered office is at Sidhil Business Park, Holmfield, Halifax, West Yorkshire, HX2 9TN.

**Minimum Rental Period:** the minimum period of hire as set out in the Quotation.

**Payment Schedule:** The schedule for payment set out in the Quotation which sets out the sums payable under this agreement.

**Quotation:** the quotation provided by the Lessor to the Lessee setting out the terms of the hire.

Recipient: the individual or the hospital, nursing home, or other institution agreed between the Lessor and the Lessee where the Equipment is to be installed or used.

Rental Payments: the payments made by or on behalf of Lessee for hire of the Equipment.

Rental Period: the period from the Commencement Date until termination of the period pursuant to clause 3.1 and 3.3.

Site: the Lessee's premises to which the Equipment is to be delivered, or the Recipient's premises, as set out in the Quotation (or in any subsequent written correspondence between the Lessor and the Lessee).

Terms: these terms and conditions which apply to the hire of the Equipment by the Lessee from the Lessor.

Termination Charge: the sum to be paid by the Lessee to the Lessor in the event of termination (howsoever caused) before the end of the Minimum Rental Period, as set out in the Quotation.

Total Loss: the Equipment is, in the Lessor's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

Warranty Period: the period set out in the Quotation which begins on the Commencement Date.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.5 A reference to writing or written includes fax and e-mail..

1.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. EQUIPMENT HIRE

2.1 The Lessor shall hire the Equipment to the Lessee subject to these Terms.

2.2 The Lessor shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with the Lessee's or the Recipient's quiet possession of the Equipment.

## 3. RENTAL PERIOD

3.1 The Rental Period starts on the Commencement Date and shall continue for the Minimum Rental Period unless either the agreement is terminated earlier in accordance with these Terms, or, after the Minimum Rental Period, the Lessor or the Lessee gives notice in writing of termination pursuant to clause 3.3.

3.2 If the agreement is terminated (howsoever caused) before the end of the Minimum Rental Period, the Lessee shall pay to the Lessor the Termination Charge.

3.3 After the Minimum Rental Period, either the Lessor or the Lessee may give notice of termination of this agreement at any time by giving seven days notice in writing (unless such period is expressly agreed otherwise in writing between the Lessor and

the Lessee) (notice period). The Rental Period shall be deemed to end after the expiry of the notice period.

3.4 Upon expiry of the Rental Period (whether before or after the Minimum Rental Period, and howsoever caused), or otherwise upon termination of the rental (howsoever caused), the Lessee shall provide the Lessor with written particulars of any contamination or other hazard including any safety hazard that has arisen in respect of the Equipment during the Rental Period sufficient to facilitate compliance by the Lessor with statutory and other reasonable requirements to make safe the Equipment, the contamination and any other hazard so that it may be maintained, repaired, removed, transported or otherwise dealt with by the Lessor as may be appropriate.

#### 4. RENTAL PAYMENTS

4.1 The Lessee shall pay the Rental Payments to the Lessor in accordance with the Payment Schedule.

4.2 The Lessee shall pay the Termination Charge to the Lessor within seven days of the date of termination of the hire.

4.3 The Rental Payments and any Termination Charge shall be paid in pounds sterling and shall be made by bank transfer to the Lessors' account [DETAILS].

4.4 The Rental Payments and Termination Charge are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee at the rate and in the manner from time to time prescribed by law.

4.5 All amounts due shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4.5 If the Lessee fails to make any payment due to the Lessor by the due date for payment, then, without limiting the Lessor's remedies under clause 11, the Lessee

shall pay interest on the overdue amount at the rate of 3% per annum above National Westminster Bank's base rate from time to time. 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 Lessee shall pay the interest together with the overdue amount.

## 5. DELIVERY AND INSTALLATION

5.1 Delivery of the Equipment shall be made by the Lessor. The Lessor shall use all reasonable endeavours to effect Delivery by the date notified in advance to the Lessee. Title and risk shall transfer in accordance with clause 6 of this agreement.

5.2 The Lessee shall be present at the time of Delivery or procure that a duly authorised representative of the Lessee shall be present. Acceptance of Delivery by the Lessee (if the Lessee is an individual) or by any representative shall constitute conclusive evidence that the Lessee has examined the Equipment (and if the Equipment is to be installed in line with clause 5.3, inspected the installation) and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Lessor, the Lessee or the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.

5.3 If the Equipment requires installation at the Site, the Lessor shall install the Equipment.

5.4 To facilitate Delivery and installation, the Lessee shall at the Lessee's expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and installation to be carried out safely and expeditiously.

## 6. TITLE, RISK AND INSURANCE

6.1 The Equipment shall at all times remain the property of the Lessor, and neither the Lessee nor the Recipient shall have any 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).

6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on Delivery. The Equipment shall remain at the sole risk of the Lessee during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Lessee or the Recipient (Risk Period) until such time as the Equipment is redelivered to the Lessor. During the Rental Period and the Risk Period, the Lessee shall, at its own expense, obtain and maintain insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Lessor may from time to time nominate in writing.

6.3 All insurance policies procured by the Lessee shall be endorsed to provide the Lessor with at least 20 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Lessor's request name the Lessor on the policies as a loss payee in relation to any claim relating to the Equipment. The Lessee shall be responsible for paying any deductibles due on any claims under such insurance policies.

6.4 The Lessee shall give immediate written notice to the Lessor in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Lessee's or the Recipient's possession or use of the Equipment.

6.5 If the Lessee fails to effect or maintain any of the insurances required under these Terms, the Lessor shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Lessee.

6.6 The Lessee shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Lessor and proof of premium payment to the Lessor to confirm the insurance arrangements.

## 7. LESSEE'S RESPONSIBILITIES

7.1 The Lessee shall during the term of this agreement:

- (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner in accordance with its instruction manual;
- (b) Comply with all safety instructions detailed in the instruction manual or as advised by the Lessor to ensure that the Equipment is at all times safe and without risk to health;
- (c) maintain at the Lessee's own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
- (d) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment unless the component(s) is/are 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 similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Lessor immediately upon installation;
- (e) keep the Lessor fully informed of all material matters relating to the Equipment;
- (f) permit the Lessor or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- (g) not part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

(h) not without the prior written consent of the Lessor, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Lessee shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Lessor against all losses, costs or expenses incurred as a result of such affixation or removal;

(i) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Lessor in the Equipment and, where the Equipment has become affixed to any land or building, the Lessee must take all necessary steps to ensure that the Lessor may enter the Site or such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from the Recipient or any person having an interest in such land or building, a waiver in writing and in favour of the Lessor of any rights such person may have or acquire in the Equipment and a right for the Lessor to enter onto the Site or such land or building to remove the Equipment;

(j) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Lessee shall notify the Lessor and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Lessor on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

(k) not use the Equipment for any unlawful purpose;

(l) ensure that at all times the Equipment remains identifiable as being the Lessor's property and not remove, deface or obscure any badge or sign identifying the Equipment as being the property of the Lessor;

(m) deliver up the Equipment at the end of the Rental Period or on earlier termination of this agreement at such address as the Lessor requires, or if necessary allow the



Lessor or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and

(n) not do or permit to be done anything which could invalidate the insurances referred to in clause 6.

7.2 The Lessee acknowledges that the Lessor shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Lessee or the Recipient (or, where relevant, the Lessee's or the Recipient's officers, employees, agents and contractors) , and the Lessee undertakes to indemnify the Lessor on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Lessee to comply with these Terms.

## 8. WARRANTY

8.1 The Lessor warrants that the Equipment shall substantially conform to its specification, be of satisfactory quality and fit for any purpose held out by the Lessor. The Lessor shall remedy, free of charge, any material defect in the Equipment which manifests itself within the Warranty Period, provided that:

(a) the Lessee notifies the Lessor of any defect in writing within ten Business Days of the defect occurring or of the Recipient becoming aware of the defect;

(b) the Lessor is permitted to make a full examination of the alleged defect;

(c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Recipient or Lessor's authorised personnel; and

(d) the defect is directly attributable to defective material, workmanship or design.

8.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Lessor, the Lessee shall be entitled only to such warranty or other benefit as the Lessor has received from the manufacturer.

8.3 If the Lessor fails to remedy any material defect in the Equipment in accordance with clause 8.1, the Lessor shall, at the Lessee's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement.

## 9. LIABILITY

9.1 Without prejudice to clause 9.2, the Lessor's maximum aggregate liability for breach of these Terms (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 the total amount of the hire charges due under the Payment Schedule.

9.2 Nothing in these Terms shall exclude or in any way limit:

- (a) either party's liability for death or personal injury caused by its own negligence;
- (b) either party's liability for fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be excluded by law.

9.3 These Terms comprise the full extent of the Lessor's obligations and liabilities in respect of the Equipment and its hiring to the Lessee. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Lessor except as specifically stated in this agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.

9.4 Without prejudice to clause 9.2 or 9.5, neither party shall be liable under this agreement for any:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of business; or
- (d) indirect or consequential loss or damage,

in each case, however caused, even if foreseeable.

9.5 Provided the Lessee has fully complied with its obligations under clause 3.4, the Lessee shall have no liability to the Lessor for any failure by the Lessor to make safe the Equipment or to deal with any contamination or other hazard in accordance with any statutory or other requirements. In the event that the Equipment is returned to the Supplier with insufficient or incorrect information of a hazard or contamination or the Lessee has failed to or allowed the Equipment not to be used for its intended purpose the Lessee shall be liable for losses attributable to the same and for the cost of making safe the Equipment.

## 10. TERMINATION

10.1 Without affecting any other right or remedy available to it, the Lessor may terminate this agreement with immediate effect by giving written notice to the Lessee if:

- (a) the Lessee fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the Lessee commits a material breach of any other term of this agreement or which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

- (c) the Lessee repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the Lessee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the Lessee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Lessee (being a company);
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Lessee (being a company);
- (h) the holder of a qualifying floating charge over the assets of the Lessee (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Lessee or a receiver is appointed over the assets of the Lessee;
- (j) the Lessee (being an individual) is the subject of a bankruptcy petition or order;
- (k) a creditor or encumbrancer of the Lessee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or

sued against, the whole or any part of the Lessee's assets and such attachment or process is not discharged within 14 days;

(l) any event occurs, or proceeding is taken, with respect to the Lessee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(d) to clause 11.1(k) (inclusive);

(m) [the Lessee (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10.2 This agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

## 11. CONSEQUENCES OF TERMINATION

11.1 Upon termination of this agreement, however caused:

(a) the Lessor's consent to the Lessee's possession of the Equipment shall terminate and the Lessor may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located, and the Lessee shall if necessary facilitate with the Recipient and use its best endeavours to ensure that the Lessor has access; and

(b) without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor on demand:

(i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.4;

(ii) any costs and expenses incurred by the Lessor in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

11.2 Upon termination of this agreement pursuant to clause 10.1, any other repudiation of this agreement by the Lessee which is accepted by the Lessor or pursuant to clause 10.3, without prejudice to any other rights or remedies of the Lessor, the Lessee shall pay to the Lessor on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period, less:

- (a) a discount for accelerated payment at the percentage rate set out in the Payment Schedule; and
- (b) the Lessor's reasonable assessment of the market value of the Equipment on sale.

11.3 The sums payable pursuant to clause 11.2 shall be agreed compensation for the Lessor's loss and shall be payable in addition to the sums payable pursuant to clause 11.1(b).

11.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

11.5 Upon termination, the Lessee will fully comply with its obligations under clause 3.4 before the Lessor takes possession of the Equipment.

## 12. FORCE MAJEURE

Neither party shall 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. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for two months, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

## 13. ASSIGNMENT AND OTHER DEALINGS

This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

#### 14. ENTIRE AGREEMENT

14.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

14.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

14.4 Nothing in this clause shall limit or exclude any liability for fraud.

#### 15. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### 16. THIRD PARTY RIGHTS

No one other than a party to the hire agreement (for the avoidance of doubt including the Recipient) shall have any right to enforce any of its terms.

#### 17. NOTICES

17.1 Any notice given to a party under or in connection with the hire agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the party's address stated overleaf.

17.2 Any notice shall be deemed to have been received on the second day after delivery or posting.:

17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 18. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 19. RIGHTS AND REMEDIES

Except as expressly provided in these terms, the rights and remedies provided are in addition to, and not exclusive of, any rights or remedies provided by law.

## 20. SEVERANCE

If any provision or part-provision of these terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these terms.



## 21. GOVERNING LAW

The agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## 22. JURISDICTION

The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the agreement or its subject matter or formation (including non-contractual disputes or claims).