

Xylem Analytics UK Limited

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TERMS AND CONDITIONS FOR HIRE OF EQUIPMENT

The Hirer's attention is drawn in particular to the liability provisions of clause 5

1. DEFINITIONS

Conditions:	the terms and conditions set out in this document.
Contract:	any contract between the Owner and the Hirer for the hire of the Goods in accordance with these Conditions and which may incorporate the Owner's rental quotation.
Goods:	the goods (or any part of them) set out in the Order
Hirer:	the body corporate which hires the Goods from the Owner
Order:	the Hirer's order for the Goods, as set out in the Hirer's oral or written offer based upon the Owner's rental quotation, as the case may be.
Owner:	Xylem Analytics UK Limited (registered in England and Wales with company number 04838831)
Owner's Group:	the holding company of the Owner and all of such holding company's subsidiaries (a subsidiary as defined in Section 1159 of the Companies Act 2006)

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Hirer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Hirer to hire the Goods in accordance with these Conditions. The Hirer shall ensure that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Owner issues a written acceptance of the Order or (if earlier) the Owner delivers or arranges delivery of the Goods to the Hirer, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Hirer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Owner which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Owner and any descriptions or illustrations contained in the Owner's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Owner and the Hirer for the hire of the Goods.
- 2.5 A rental quotation for the Goods given by the Owner shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, provided that the Owner has not previously withdrawn it.
- 2.6 If, prior to the commencement of the period of hire, the Hirer makes a written application to the Owner at its registered office expressing a **desire to cancel** all or any part of the Order, such cancellation shall only be effected if the Owner in its absolute discretion considers appropriate and on terms which compensate the Owner against any loss.

3. DURATION AND DELIVERY

- 3.1 The period of hire shall commence on the date on which the Goods are collected by or delivered to the Hirer. The period of hire shall end on the return date specified in the Owner's rental quotation.
- 3.2 The Owner shall at the Hirer's expense arrange for the Goods to be delivered to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Owner notifies the Hirer that the Goods are ready.
- 3.3 Delivery of the Goods shall be undertaken by a carrier chosen by the Owner and delivery shall be completed on the Goods' arrival at the Delivery Location.
- 3.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Owner shall not be liable for any delay in delivery of the Goods that is caused by any event beyond its reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, or the Hirer's failure to provide the Owner with adequate delivery instructions or any other instructions that are relevant to the delivery of the Goods. The Hirer is responsible for returning the Goods to the Owner.

4. PAYMENT OF HIRE RENT

- 4.1 The price of the Goods shall be either:
 - (a) the price set out in the Order; or
 - (b) if no price is quoted in the Order, the price set out in the Owner's published price list in force as at the date of receipt by the Owner of the Order.
- 4.2 The method of payment for the Goods will be set out in the Owner's rental quotation. Payment shall be made to the bank account nominated in writing by the Owner in pounds sterling. Time of payment is of the essence
- 4.3 The date of delivery and the date of redelivery to the Owner shall be counted as whole days for the purpose of calculating hire rent.

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- 4.4 The Owner may, by giving notice to the Hirer at any time up to 20 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Owner's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Hirer to change the delivery date(s), quantities or types of Goods ordered; or
 - (c) any delay caused by any instructions of the Hirer or failure of the Hirer to give the Owner adequate or accurate information or instructions.
- 4.5 The Hirer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Hirer shall not be entitled to assert any credit, set-off or counterclaim against the Owner in order to justify withholding payment of any such amount in whole or in part. The Owner may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Hirer against any amount payable by the Owner to the Hirer.
- 4.6 If the Hirer fails to make any payment due to the Owner under the Contract by the due date for payment (**due date**), then the Hirer shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

5. DEFECTIVE GOODS

The Hirer shall report any defects or malfunction in the Goods within 48 hours of delivery and shall, if so requested by the Owner, return the Goods to the Owner for inspection by the Owner. If the Owner agrees in its absolute discretion that the Goods are not functioning properly, it shall use all reasonable endeavours (but shall not be bound) to provide a suitable replacement item or items from the stock of the Owner, as it shall in its absolute discretion consider appropriate. Subject only to the above, the Owner accepts no responsibility for any loss, damage, costs, claims or expenses suffered or incurred by the Hirer or by any third person (including the Hirer's servants or agents), except that the Owner does not by this exclude its liability or death or personal injury arising out of the negligence of the Owner, its servants or agents or the Owner's Group.

6. USE

The Goods shall be under the control of the Hirer at all times from delivery until redelivery to the Owner, and the Hirer shall ensure that the Goods are used safely and without risk to health, are used by competent and duly licensed operators as the case may be, and are not used for any purpose for which it is not designed or reasonably suitable.

7. INDEMNITY

As an obligation surviving termination of this agreement, the Hirer shall be responsible for and shall indemnify the Owner in respect of any claim made against the Owner and all damages, costs and expenses suffered or incurred by the Owner as a result of any third party claim arising out of the state, condition or use of the Goods or in any way arising out of the Goods being let under this agreement.

8. INSURANCE

The Hirer shall from the time delivery is completed in accordance with clause 3.3 keep the Goods insured in their full replacement value against loss or damage and third party risks and shall produce evidence of such insurance to the Owner, who shall be entitled to withhold delivery until such production.

9. LOCATION OF GOODS,

The Hirer shall not move the Goods from the location specified in the Owner's rental quotation without first obtaining the Owner's written consent (which may be withheld or made subject to such conditions as the Owner in its absolute discretion shall decide).

10. NO SALE ETC

- 10.1 The Hirer shall keep the Goods in its sole possession and shall not lend the Goods or sublet it to any person or otherwise part with possession of it in any way. The Hirer acknowledges that the Goods remain the property of the Owner (or the Owner's Group) at all times and must not in any circumstances be sold or used as security. The Hirer shall not permit any lien to be created on the Goods or pledge the Owner's credit for repairs to it.
- 10.2 The Owner may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 10.3 The Hirer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Owner, such consent not to be unreasonably withheld.

11. MAINTENANCE

- 11.1 The Owner will maintain the Goods at its own expense and the Hirer shall, when required by the Owner, grant access to the Goods for the purpose of inspecting it and carrying out any work of maintenance or repair.
- 11.2 Maintenance of the Goods does not include interim calibrations, which are the responsibility of the Hirer. Calibration intervals are laid out in the Goods' manuals. If during the period of hire a calibration is required, Hirers should contact the Owner to request free training in this matter.

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- 11.3 The Hirer is to ensure the Goods are kept clean, tidy, in good condition, and shall not subject the Goods to any unreasonable wear and tear.
- 11.4 The Hirer shall preserve the Owner and manufacturer's identification marks and any nameplates that may be on the Goods.
- 11.5 The Hirer shall observe all the manufacturer's instructions and recommendations for the proper use of the Goods.

12. REPAIRS

- 12.1 The Hirer must not repair or attempt to repair the Goods in the event of damage or breakdown but must at once notify the Owner.
- 12.2 If the damage or breakdown has been caused by the fault or carelessness of the Hirer or by misuse of the Goods, the repair will be at the expense of the Hirer.
- 12.3 In any case other than under clause 12.2 above the repair will be at the expense of the Owner.
- 12.4 The Owner may substitute other Goods of a similar type or condition in lieu of repairing the Goods without relieving the Hirer from responsibility for the cost of repair under clause 12.2 and without extending the period of hire.
- 12.5 The Owner may terminate the hiring by written notice to the Hirer at any time if in the sole opinion of the Owner the Goods are not worth repairing or cannot be repaired; in such event (except where clause 12.2 applies) the Owner shall repay the hire rent for any outstanding period for which it has already been paid.
- 12.6 Nothing in this clause shall affect or diminish the liability of the Hirer for any breach of this agreement or render the Owner liable to the Hirer for any resultant or consequential loss, damage or inconvenience.

13. TERMINATION

- 13.1 This agreement and the hiring constituted by it shall without notice but at the option of the Owner end, and the Hirer shall no longer be in possession of the Goods with the Owner's consent, in any of the following circumstances:
 - (a) a default by the Hirer in the payment of any money due under this agreement for a period of 10 days;
 - (b) a breach by the Hirer of any of the provisions of this agreement other than those relating to the payment of money;
 - (c) the Hirer is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
 - (d) the Hirer entering into or attempting to enter into a composition with creditors or (in the case of a limited company) going into liquidation except a voluntary liquidation for the purpose of amalgamation or reconstruction on terms previously approved by the Owner in writing;
 - (e) a receiver or administrator being appointed in respect of the Hirer's assets or any of them, or a meeting, whether formal or informal, being called of the Hirer's creditors or any of them.
- 13.2 If the Hirer becomes subject to any of the events listed in clause 13.1, then, and without limiting any other right or remedy the Owner may have, the Owner may at any time require the Hirer to deliver up the Goods and, if the Hirer fails to do so promptly, enter any premises of the Hirer or of any third party where the Goods are stored in order to recover them.

14. SEVERANCE.

- 14.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15. GENERAL

- 15.1 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 15.2 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.3 Any **variation** to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by both parties.
- 15.4 **Governing law and jurisdiction.** The Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 15.5 **Data Protection.** The Hirer acknowledges and agrees that details of the Hirer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Owner in connection with the hire of the Goods.