

DJB LABCARE - HIRE AGREEMENT 1.

1. Interpretation

Expressions defined in the Schedule have the same meanings in this Agreement and the following expressions shall have the following meanings:

- "Default Rate" 2% per month calculated on a daily basis (as well after as before any judgement);
- "Equipment" includes each item thereof and all replacements, renewals, parts, accessories and additions thereto;
- "Hire" Hire of the Equipment subject to the terms of this Agreement;
- "Hire Charges" DJB labcare's hire charges shown on its current schedule for the time being or such other charges as may have been agreed between the parties;
- "Hire Period" the period specified in the Schedule;
- "DJB labcare" DJB labcare;
- "Schedule" the schedule to this Agreement.

2. The Hire

- 2.1 DJB labcare agrees to let and Hirer to hire Equipment subject to provisions of this Agreement which apply to exclusion of all other terms and conditions and shall not be varied except in writing signed by DJB labcare.
- 2.2 Hire shall commence on the Commencement Date and continue for the Hire Period subject to the provisions for earlier termination below.
- 2.3 Hire may not be cancelled by Hirer without consent of DJB labcare and only on terms that Hirer indemnifies DJB labcare in full against all loss (including loss of profit) incurred by DJB labcare as a result of cancellation.

3. Delivery and Return of Equipment

Unless Schedule otherwise provides, Equipment will be collected on the Commencement Date from and returned at end of Hire to DJB labcare's address. Equipment is deemed returned only when DJB labcare issues a return receipt.

4. Hire Charges and Other Payments

- 4.1 Hire Charges shall be paid by Hirer without previous demand to be received in cleared funds on or before due date(s) for payment. Time shall be of the essence in respect of all payments due under this Agreement and shall be treated as paid on the date DJB labcare obtains value, shall bear interest at the Default Rate from the date due, expended or incurred until payment and shall be paid without any deduction, set-off or counterclaim whatsoever. Any payment by post shall be at the sole risk of Hirer.
- 4.2 Hirer shall remain liable for Hire Charges until date of return of Equipment to DJB labcare and, if Equipment is lost, stolen, damaged or destroyed, until its repair or replacement.
- 4.3 DJB labcare reserves right to appropriate any payments made (not withstanding express appropriation by Hirer) to any sums payable to DJB labcare under this or any other agreement between the parties.

5. Hirer's Obligations

Hirer undertakes during the continuance of Hire and until return of Equipment to DJB labcare:

- 5.1 to take all reasonable care of Equipment to ensure its safety and security and, in event of its loss or damage, to indemnify DJB labcare in accordance with Clause 7 below;
- 5.2 to check Equipment before taking into use, to notify DJB labcare forthwith of any repair or maintenance required to Equipment and not to permit such repair or maintenance other than by DJB labcare or with its authority;
- 5.3 to ensure Equipment is only used in a proper manner without risk to health and safety and not contrary to any law or for any purpose for which Equipment is not designed or reasonably suitable; and not to make any modification to Equipment, open the outer case (unless required in normal use) or remove any notices or serial numbers on the Equipment;
- 5.4 to permit or procure for DJB labcare or its agents access to inspect or remove Equipment;
- 5.5 to notify DJB labcare in writing of any change in Hirer's details in the Schedule and upon request to inform DJB labcare of the location of Equipment;
- 5.6 not to sell, sub-let or otherwise dispose of or part with Equipment or any interest therein or do or permit to be done any act or thing which may jeopardise DJB labcare's rights therein but to keep Equipment in its possession and control free from lien, charge or encumbrance so that Equipment shall at all times remain property of DJB labcare or its legal owner.

6. DJB labcare's Obligations

Except where Hirer is in default under this Agreement or maintenance or repair is necessitated by wilful abuse, negligence or accident, DJB labcare shall maintain Equipment free of charge to Hirer; shall as soon as practicable on request provide replacement Equipment if DJB labcare is unable to repair the same (any replacement being for all purposes subject to this Agreement) provided that DJB labcare's liability hereunder shall not extend to on-site support or delivery of any replacement to an address outside the UK mainland.

7. Insurance

- 7.1 Hirer shall at its own expense insure Equipment with an insurance company of repute (naming DJB labcare as a loss payee): against all loss or damage in an amount equal to its new replacement cost; against third party liability; and against liability for any ongoing Hire Charges under Clause 4.2; in each case until Equipment is returned to DJB labcare in good working order and condition (fair wear and tear excepted) or is at Hirer's cost either repaired or (if not capable of economic repair) replaced with new equipment or insurance proceeds and amount of any excess are received by DJB labcare, whichever is the earlier.
- 7.2 Hirer will on request at any time produce to DJB labcare the insurance policy and receipt for current premium. If Hirer fails to keep Equipment insured to DJB labcare's satisfaction or to produce policy or receipt, DJB labcare may insure Equipment and Hirer will pay DJB labcare on demand any sums so expended by DJB labcare with interest at Default Rate from date of expenditure until repayment including, without limitation, in event of a claim, the amount of the insurance policy excess and of any increased premiums payable by DJB labcare as a result of such claim.
- 7.3 Hirer hereby irrevocably authorises DJB labcare in name and on behalf of Hirer to make any claims under the insurance in respect of loss of or damage to Equipment; to settle or compromise such claims; and to receive and give good discharge to insurers for any moneys payable.
- 7.4 Hirer shall not do or allow to be done any act or thing whereby insurance of Equipment may be invalidated.
- 7.5 In event of loss of or damage to Equipment, Hirer shall notify DJB labcare forthwith, assist in making appropriate claims under such insurance and not without DJB labcare's consent settle or compromise any claim.

8. Limitation of Liability

- 8.1 The following provisions set out DJB labcare's entire liability (including liability for acts or omissions of its employees, agents and sub-contractors) to the Hirer in respect of: 8.1.1 any breach of contractual obligations under this Agreement; and 8.1.2 any representation, statement or tortious act or omission including negligence; and THE HIRER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 8.
 - 8.2 Hirer acknowledges that Equipment was selected by Hirer as suitable for its purpose in all respects and Hirer has not relied on any advice or recommendations of DJB labcare, unless confirmed by DJB labcare in writing.
 - 8.3 DJB labcare shall use reasonable endeavours to ensure Equipment is in good working condition on delivery but subject thereto and provided nothing in this Agreement shall limit or exclude DJB labcare's liability in respect of death or personal injury resulting from DJB labcare's negligence:
 - 8.3.1 no condition, warranty or representation is given or made by DJB labcare in respect of Equipment and all other conditions, warranties or representations, express or implied, statutory or otherwise, as to its state, quality, description or fitness for purpose are hereby excluded to the fullest extent permitted by law;
 - 8.3.2 DJB labcare will not be liable for any loss, damage or expense caused by Equipment, its inadequacy for any purpose, any error in its operation, any interruption or loss of use, any deficiency or defect therein, any unauthorised repairs thereto, any increased cost of working, loss of profit or goodwill or other direct or indirect damage however caused, even if such loss was reasonably foreseeable or DJB labcare was advised of the risk of its occurrence;
 - 8.3.3 Hirer undertakes (notwithstanding termination of the Hire) to indemnify DJB labcare against all liabilities whatsoever arising out of the operation and use of Equipment provided such indemnity shall not extend to liability for death or personal injury caused by DJB labcare's negligence.
 - 8.3.4 DJB labcare shall have no liability in respect of any claim unless Hirer gives DJB labcare reasonable details in writing of the claim forthwith and in any event within 90 days of occurrence of the matter giving rise to the claim and then the liability of DJB labcare shall be limited to the total Hire Charges for the Hire.
- 8.4 The Contracts (Right of Third Parties) Act 1999 shall not apply this Agreement.

9. Termination

- 9.1 Hire shall forthwith terminate without notice if Hirer shall (being an individual) die or be subject to an interim order (within meaning of Insolvency Act 1986) or the presentation of a bankruptcy petition; or enter into any arrangement or composition with creditors; or (being a limited company) enter into compulsory or voluntary liquidation (not being for the purpose of reconstruction or amalgamation on terms previously approved by DJB labcare in writing); or have a receiver appointed or a petition presented for an administration order; or have any distress, execution or other legal process made in respect of Hirer's property; or if anything analogous to the foregoing under the laws of any jurisdiction shall occur in relation to the Hirer.
- 9.2 DJB labcare may serve notice on Hirer terminating Hire forthwith if Hirer: fails to pay any sums payable hereunder in full on the due date; commits a breach of any other provision hereof and (if capable of being remedied) fails to remedy such breach within 7 days after notice from DJB labcare requiring the same; or shall cause or permit to be done any act or thing whereby DJB labcare's rights in Equipment are prejudiced.
- 9.3 Upon termination, which shall be effective notwithstanding subsequent acceptance by DJB labcare of Hire Charges, Hirer shall no longer be in possession of Equipment with DJB labcare's consent and (without prejudice to Hirer's obligations under Clauses 4, 5 and 7 and any other rights and remedies of DJB labcare under this Agreement) Hirer shall:
 - 9.3.1 at Hirer's expense return Equipment to DJB labcare in good working condition (fair wear and tear excepted) and in default DJB labcare may forthwith without notice repossess Equipment and for this purpose freely enter any premises occupied by or under control of Hirer;
 - 9.3.2 become immediately liable to pay to DJB labcare: all costs and expenses (including without limitation, any legal costs and expenses) incurred by DJB labcare in locating, repossessing or restoring Equipment, collecting any sums due or otherwise in obtaining due performance of Hirer's obligations hereunder; all arrears of Hire Charges and other sums payable with interest thereon at Default Rate; and the unpaid balance of the Hire Charges.
- 9.4 DJB labcare may terminate Hire without liability to Hirer if performance by DJB labcare is prevented by circumstances beyond DJB labcare's reasonable control (including, without limitation, trade disputes or industrial action whether or not involving employees of DJB labcare).

10. General

- 10.1 No forbearance or indulgence on the part of DJB labcare in enforcing this Agreement shall prejudice the strict rights of DJB labcare nor be construed as a waiver thereof.
- 10.2 If any provision of this Agreement becomes invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions shall be unaffected.
- 10.3 Hirer may not without the prior consent of DJB labcare assign, transfer or charge this Agreement or its rights hereunder or purport so to do.
- 10.4 Headings in this Agreement are for convenience only and shall not affect interpretation.
- 10.5 All notices or consents hereunder shall be in writing and be duly given when delivered or (in the case of facsimile) when despatched to the party to its address set out herein or to such address or facsimile number as such party may notify the other for such purpose. A notice or consent received after business hours shall be deemed served on the next following business day.
- 10.6 If Hirer is more than one person, obligations and liabilities of such persons shall be joint and several.
- 10.7 This Hire shall be governed by English law. Claims against DJB labcare shall be brought exclusively in the English Courts. Claims against Hirer may be brought in courts of England or of any territory where Hirer may at any time be resident, carry on business or have assets.