Highway Traffic Management Limited Terms of Business

The Customer's attention is particularly drawn to the provisions of clause 12

1. INTERPRETATION

1.1 In these Conditions, 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.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.7.

Contract: the contract between HTM and the Customer for hire of Equipment and/or the supply of Services in accordance with these Conditions.

Customer: the person or firm who hires Equipment and/or purchases Services from HTM.

Delivery Date: the date on which HTM delivers Equipment to the Site (or if so agreed) on which the Customer collects the Equipment.

Departure Time: the time at which HTM personnel depart from its depot to commence provision of the Services and/or deliver the Equipment (or the time at which Equipment will be collected).

Drawings: any traffic management scheme drawings prepared by HTM under an Order or otherwise agreed by HTM in writing to be applicable to the provision of Services under an Order.

Equipment: the items of equipment described in the Quotation (or otherwise agreed by HTM in writing), all replacements of such equipment and related manuals, accessories and instructions (if any) provided for them.

Force Majeure Event: has the meaning given to it in clause 14.1.

HTM: Highway Traffic Management Limited registered in England and Wales with company number 2305137.

Intellectual Property Rights: patents, copyright and related rights, trade marks, business names and domain names, goodwill, rights in designs, database rights, and all other intellectual property rights whatsoever.

Order: the Customer's order for the hire of Equipment and/or the supply of Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Quotation, as the case may be.

Quotation: the written quotation of HTM.

Rental Payment: the payments to be made for the hire of the Equipment as specified in the Quotation or otherwise agreed by HTM in writing.

Rental Period: the period of hire specified in the Quotation or otherwise agreed by HTM in writing.

Scheduled Departure Time: the time at which HTM personnel are scheduled to depart from its depot to commence provision of the Services and/or deliver the Equipment (or the time at which Equipment will be collected).

Services: the services, supplied by HTM to the Customer as set out in the Quotation or otherwise agreed by HTM in writing.

Site: the location specified in the Quotation or otherwise agreed by HTM in writing.

1.2 In these Conditions, the following rules apply:

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(c) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to hire Equipment and/or purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when HTM issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of HTM which is not set out in these Conditions or the applicable Quotation.

2.4 Any samples, drawings, descriptive matter or advertising issued by HTM and any illustrations or descriptions of Equipment and/or Services contained in HTM's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by HTM shall not constitute an offer, and is only valid for a period of 14 Days from its date of issue.

2.7 All of these Conditions shall apply both to the hire of Equipment and the supply of Services except where application to one or the other is specified.

3. EQUIPMENT

3.1 HTM shall hire the Equipment to the Customer for use at the Site subject to these Conditions.

3.2 The Rental Period starts on the Delivery Date and shall continue for the period specified in the Quotation or otherwise agreed by HTM in writing unless terminated earlier in accordance with these Conditions.

4. DELIVERY OF EQUIPMENT

4.1 Unless otherwise agreed in writing HTM shall deliver the Equipment to the Site. HTM shall use reasonable endeavours to effect delivery by the date and time agreed between the parties but any such date and time shall be an estimate only and time shall not be of the essence.

4.2 Unless otherwise agreed in writing HTM shall set up the Equipment at the Site. The Customer shall ensure that its duly authorised representative shall be present at the set up of the Equipment. Acceptance by such representative of the Equipment constitutes conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit for the purpose for which it is intended. If required by HTM the Customer's duly authorised representative shall sign a receipt confirming acceptance.

4.3 To facilitate delivery and set up of Equipment, the Customer shall at its sole expense provide access and suitable working conditions to enable the Equipment to be delivered and set up safely and expeditiously.

4.4 Except where clause 17 applies the Equipment shall at all times remain the property of HTM and the Customer shall have no right, title or interest in or to the Equipment (save for the right to possession and use of the Equipment subject to these Conditions).

4.5 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further period during which the Equipment is in the possession, custody or control of the Customer until such time as the Equipment is redelivered to or collected by HTM.

4.6 The Customer shall give immediate written notice to HTM in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.

5. EQUIPMENT RESPONSIBILITIES

5.1 Without prejudice to the obligation of HTM to provide any agreed maintenance Services the Customer shall:

(a) ensure the Equipment is used only for the purpose for which it is designed, and is operated in a proper manner by trained competent staff in accordance with any operation instructions;

(b) keep the Equipment clean and maintain at its 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 Delivery Date (fair wear and tear only excepted) and shall make good any damage to the Equipment;

(c) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of HTM. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in HTM immediately upon installation;

(d) keep HTM fully informed of all material matters relating to the Equipment;

(e) keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without HTM's prior written consent;

(f) permit HTM 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;

(g) not part with control of, 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 do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of HTM in the Equipment;

(i) not use the Equipment for any unlawful purpose; and

(j) at the end of the Rental Period or on earlier termination of Contract allow HTM or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment.

5.2 The Customer acknowledges that HTM 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 Customer or its officers, employees agents and contractors and the Customer undertakes to indemnify HTM 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 Customer to comply with these Conditions.

5.3 Where the Customer is responsible under these Conditions for the cost of repairing or replacing Equipment which is damaged, destroyed or otherwise not returned to HTM, the Customer shall in addition to the cost of repair or replacement and without prejudice to any other right or remedy of HTM be liable to pay HTM on demand an amount equal to 25% of the cost of repair or replacement of the Equipment concerned as compensation for costs and losses incurred as a result of the non-availability of equipment.

6. EQUIPMENT WARRANTY

6.1 Subject to clause 17 HTM warrants that the Equipment shall substantially conform to any specification made available by HTM in relation to the Equipment and be of satisfactory quality. HTM shall use all reasonable endeavours to remedy or replace, free of charge, any material defect in the Equipment during the Rental Period provided that:

(a) the Customer notifies HTM of any defect in writing promptly on the defect occurring;

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

(c) the defect did not occur as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than HTMs authorised personnel.

7. SUPPLY OF SERVICES

7.1 HTM shall provide the Services to the Customer in accordance with the Quotation and (where applicable) any specification or Drawings expressly agreed to by HTM in writing in all material respects.

7.2 HTM shall use reasonable endeavours to meet any performance dates for the Services specified in the Quotation or otherwise agreed by HTM in writing but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 HTM shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and HTM shall notify the Customer in any such event.

7.4 HTM shall provide the Services using reasonable care and skill.

7.5 Where HTM has advised the Customer that the Service cannot be commenced until Drawings, a specification or a mobilisation plan has been agreed the parties shall use reasonable endeavours to agree the same as soon as reasonably practicable and HTM shall not be required to commence provision of the Services until such time as the same has been agreed.

8. SERVICE RESPONSIBILITIES

8.1 The Customer shall:

(a) co-operate with HTM in all matters relating to the Services;

(b) provide any applicable Drawings or (where HTM is preparing the Drawings as part of the Services) act promptly and reasonably to approve the Drawings;

(c) provide HTM, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by HTM to provide the Services;

(d) provide HTM with such information and materials as HTM may reasonably require to supply the Services, and ensure that information provided is accurate in all material respects;

(e) (unless otherwise agreed by HTM in writing) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

(f) keep and maintain all materials, equipment, documents and other property of HTM at the Customer's premises in safe custody at its own risk, maintain the same in good condition until returned to HTM, and not dispose of or use them other than in accordance with HTM's written instructions or authorisation.

8.2 If HTM's performance of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) HTM shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays HTM's performance of any of its obligations;

(b) HTM shall not be liable for any costs or losses sustained or incurred by the Customer arising from HTM's failure or delay to perform any of its obligations as set out in this clause 8.2; and

(c) the Customer shall reimburse HTM on written demand for any costs or losses sustained or incurred by HTM arising from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The Rental Payment shall be as set out in the Quotation or, if no price is quoted, as set out in HTM's published price list as at the date of the Order.

9.2 The charges for Services shall be as set out in the Quotation.

9.3 If the Customer cancels its requirement for Services and/or Equipment:

(a) more than 10 hours before the Scheduled Departure Time the Customer shall be liable to pay the cancellation charge which the Supplier acting reasonably considers will cover any costs or losses it incurs as a result of cancellation and notifies to the Customer in writing; or

(b) less than10 hours before the Scheduled Departure Time the Customer shall be liable to pay on demand 75% of the total charges payable for the cancelled Services and Equipment as specified in the applicable Quotation; or

(c) after the Departure Time the Customer shall be liable to pay on demand 100% of the total charges payable for the cancelled Services and Equipment as specified in the applicable Quotation.

9.4 Unless otherwise specified in the Quotation HTM shall be entitled to invoice the Customer for Rental Payments and charges for Services on or at any time after completion of delivery of the Equipment or commencement of provision of the Services.

9.5 The Customer shall pay each invoice submitted by HTM within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by HTM, and time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time which shall be payable in addition.

9.7 If the Customer fails to make any payment due to HTM under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank plc'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 Customer shall pay the interest together with the overdue amount.

9.8 The Customer shall pay all amounts due under the Contract in full without any retention, set-off, counterclaim, deduction or withholding except as required by law. HTM may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by HTM to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by HTM. If as part of the Services HTM prepares any Drawings for the Customer, it agrees to assign the copyright in such Drawings to the Customer on receipt of payment in full of all charges payable under the Contract.

11. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**) or which the receiving party may otherwise obtain. The receiving party shall only use such confidential information for the purpose of discharging the receiving party's obligations under the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY

12.1 Nothing in these Conditions shall limit or exclude HTM's liability for death or personal injury caused by its negligence (or the negligence of its employees, agents or subcontractors), fraud or fraudulent misrepresentation or any matter for which it would be unlawful for HTM to limit or exclude its liability or attempt to do so.

12.2 Subject to clause 12.1:

(a) HTM shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue or any indirect or consequential loss arising under or in connection with the Contract ;

(b) HTM's total liability for damage to physical property of the Customer whether in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited in aggregate to £200,000 (two hundred thousand pounds); and

(c) HTM's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited in aggregate to the greater of (i) £10,000 (ten thousand pounds) or (ii) an amount equal to the total charges paid by the Customer for the Services plus any Rental Payment paid by the Customer under the Contract.

12.3 All conditions, warranties and terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(c) the other party makes a proposal for or enters into any compromise or arrangement with its creditors or 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 other party;

(d) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress or other process is levied or enforced on or against the whole or any part of its assets;

(e) an administrator, administrative receiver or receiver is appointed over the other party or assets of the other party; or

(f) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

13.2 Without limiting its other rights or remedies, HTM may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.3 On termination of the Contract for any reason:

(a) the Customer shall immediately pay to HTM all of HTM's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, HTM shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall permit HTM to collect the Equipment and any other materials owned by HTM and to enter the Site or any Customer's premises for such purpose. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. FORCE MAJEURE

14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of HTM including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of HTM or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2 HTM shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents HTM from providing any of the Services and/or

Equipment for more than 14 days, HTM shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15. GENERAL

15.1 The Customer shall not, without the prior written consent of HTM, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 Any notice given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier.

15.3 If any provision or part-provision of the Contract 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 the Contract.

15.4 A waiver of any right is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.

15.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

15.6 A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.7 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by HTM.

15.8 This 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.

15.9 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

16. EXCLUSIONS

16.1 For the avoidance of doubt unless expressly included in the applicable Quotation the following are not included in the Services:

(a) Applying or amending of traffic orders,
(b) sweeping of the carriageway prior to trafficking,
(c) winter treatment of road prior to trafficking
(d) Any civil engineering work
(e) Traffic safety & Control officer
(f) Banks man/Plant coordinators
(g) Communications systems
(h) Recovery vehicles
(i) Impact Protection Vehicle
(j) Temporary or permanent barrier/vehicle containment barrier
(k) C.C.T.V
(l) Flood/task lighting
(m) Illumination of signs
(n) Safety fencing
(o) Fixing of supplied temporary pedestrian ramps (the Customer is responsible for arranging/fixing the same)
(p) Pedestrian management
(q) Removal of reinstatement of cats eye housings
(r) Post mounting/concrete foundations for temporary/permanent signs
(s) Reinstatement of T.M measures as a result of other actions
(t) Provision of none standard signs/wide load signage
(u) Provision of advanced closure/information signage
(v) Permanent/temporary road markings
(w) Design/submission of TM design

17. SALE OF EQUIPMENT

17.1 Where HTM has agreed to sell any equipment to the Customer, the Customer acknowledges and agrees that the sale is of second hand equipment without warranty on an "as is" basis and that all conditions, warranties and terms implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.

17.2 Equipment shall not be sold to the Customer under this Contract unless HTM has expressly agreed to such sale in writing. The sale price of any such equipment shall be as agreed by HTM and the Customer in writing and shall be payable by the Customer in full in cleared funds prior to delivery to or collection by the Customer of the equipment concerned.

18. CUSTOMER ACKNOWLEDGEMENT

18.1 Without prejudice to the Customer's obligation to use the Equipment in accordance with all applicable laws, the Customer acknowledges and agrees that all traffic management systems must be carried out in accordance with Chapter 8 of the Traffic Signs Manual and/or the Safety at Street Works and Road Works (A Code of Practice) as the same may be updated, amended or replaced from time to time.