

AGGREKO T&Cs

Important: Please carefully read below the Aggreko T&Cs, in particular, Clause 2.6, Indemnity (Clause 7), Termination (Clause 9), Consequences of Termination (Clause 10), No Liability (Clause 13), Governing Law and Jurisdiction (Clause 19) and other clauses relating to both parties' liabilities. By signing the Quotation, the Hirer confirms and acknowledges that it has fully understood and accepted all the terms and conditions of the Agreement.

1 DEFINITIONS

"**Aggreko**" means Aggreko Japan KK with its registered address at Ace Kudan Building 4F, 2-2-1 Kudamini, Chiyoda-ku, Tokyo Japan 102-0074 (as detailed in the Quotation) which is incorporated in Japan, and which expression shall, where the context so admits, include its successors in title and assignees;

"**Agreement**" means, in respect of any Quotation, the rental agreement between Aggreko and the Hirer constituted by the Quotation and these Aggreko T&Cs (as from time to time amended, modified or supplemented) and, unless otherwise agreed in writing by Aggreko, excludes any terms or conditions stipulated by the Hirer and any representations, warranties or communications not expressly incorporated in the Agreement;

"**Agreement Date**" means, in respect of any Quotation, the date on which Hirer accepts and signs the relevant Quotation;

"**Commissioning Engineer**" means the engineer sent to install and commission the Equipment following delivery;

"**Damage Waiver**" means the cover provided by Aggreko for damage to the Equipment under Clause 5, if paid by the Hirer;

"**Equipment**" means the equipment listed in the Quotation (which expression shall include each or any part of the Equipment so described and all the accessories and additions thereto and all replacements and renewals thereof whether made before or after the Agreement Date);

"**Hirer**" means, in respect of any Quotation, the person named in the Quotation; and where two or more persons are included in the expression "the Hirer", the liabilities of the Hirer as stipulated hereunder shall be joint and several;

"**Minimum Hire**" means the minimum rental period of this Agreement as specified in the Quotation;

"**Minimum Rental**" means the minimum rental fees payable by the Hirer to Aggreko as specified in the Quotation;

"**Month**" means any calendar month;

"**Rate**" means, in respect of any Quotation, the amounts specified in the Quotation;

"**Quotation**" means any quotation form provided by Aggreko to the relevant Hirer;

"**Rental Fee**" means, in respect of any Quotation, the rental fees calculated based on the terms set out in the Quotation which is exclusive of any goods and services tax payable thereon;

"**Resident Engineer**" means the engineer who will reside in the Hirer's site and provide overall instructions on the installation, commissioning, maintenance and daily use of the Equipment;

"**Sensitive Countries**" means any of the Republic of Cuba, the Democratic People's Republic of Korea, the Islamic Republic of Iran, the Republic of the Sudan, the Syrian Arab Republic, Myanmar and the Republic of Zimbabwe;

"**Standby Charge**" means, in respect of any Quotation, the standby charges calculated based on the terms set out in the Quotation which is exclusive of any goods and services tax payable thereon;

"**Term**" means the rental period of this Agreement as specified in the Quotation (which expression shall include any variation of the rental period, including the early termination or extension of the rental period as agreed and confirmed by both parties in writing); and

"**Week**" means a period of seven (7) days.

2 RATE AND DELIVERY

2.1 The Hirer shall pay to Aggreko the Rental Fee in accordance with this Agreement. Punctual payment of the Rental Fee shall be of the essence of this Agreement.

2.2 All sums payable by the Hirer under this Agreement are exclusive of any goods and services tax or any tax of a similar nature that may be substituted for it or levied in addition to it (whether imposed in Japan or elsewhere) which shall, where applicable, be paid by the Hirer in addition to the sums otherwise payable, at the rate in force at the due time for payment or such other time as it is stipulated under the relevant legislation.

2.3 Transportation and installation of the Equipment shall be arranged in the manner stipulated in the Quotation. To the extent any Commissioning Engineer and/or Resident Engineer is selected by the Hirer for Equipment installation or maintenance services, the Hirer shall pay the fees thereof to Aggreko in accordance with this Agreement.

2.4 All sums expressed to be payable by the Hirer under this Agreement shall be made without any deduction, set off, withholding or counterclaim whatsoever. If the Hirer (or any person on its behalf) is required by law to make any deduction or withholding or to make any payment, on account of any taxes, from or calculated by reference to the sums received or receivable by Aggreko under this Agreement, the sum payable by the Hirer in respect of which the relevant deduction, withholding or payment is required on account of such taxes, shall be increased to the extent necessary to ensure that after the making of that deduction, withholding or payment, Aggreko receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what Aggreko would have received and so retained had no such deduction, withholding or payment been required or made.

2.5 The Hirer shall pay to Aggreko interest on all overdue sums at the rate of twelve (12) per cent per annum and calculated on a daily basis from the date on which sums fall due for payment to the date on which sums are paid or recovered by Aggreko, as the case may be (both before and after judgment).

2.6 If Aggreko fails to deliver the Equipment after the date set out in the Quotation, which has been accepted by Aggreko, for any reason beyond Aggreko's reasonable control, the Hirer's remedy shall be limited to a right to terminate the Agreement by prior written notice to Aggreko and Aggreko shall not be liable for any loss or damage suffered by the Hirer as a result of Aggreko's failure to deliver the Equipment.

2.7 The Hirer shall be responsible for any loss or damage of the Equipment for any cause, from the time when the Equipment is delivered to the Hirer until the time when it is returned to Aggreko in accordance with this Agreement.

3 COVENANTS AS TO OPERATION AND USE

During the Term, the Hirer shall:

3.1 maintain or cause the Equipment to be properly used and maintained and keep the Equipment in good and substantial repair and operating condition at all times in accordance with the standards of maintenance for the Equipment as prescribed by Aggreko and manufacturer(s) from time to time (fair wear and tear excepted);

3.2 at all times, at its own expense, comply with all the requirements as set out by the manufacturer(s) of the Equipment in its use, operation, care and repair of the Equipment. Prior to or upon taking possession of the Equipment, the Hirer shall acquaint itself with the details of all such requirements;

3.3 permit Aggreko and any person(s) authorized by it a one-day's prior notice to the Hirer to enter upon the premises where the Equipment is placed or kept at all reasonable times, in order to inspect and/or examine the Equipment or any part thereof and/or to carry out any maintenance, overhaul, replacement, repair or modification required;

3.4 upon the request of Aggreko, notify Aggreko of the place where the Equipment is or will be located;

3.5 not transport, or intend to transport, the Equipment into the territory of any Sensitive Countries;

3.6 keep the Equipment at all times under its/his possession and control and not, without prior written consent of Aggreko, remove the same or any part thereof from the premises where it is placed or kept, or from its location within the premises where it is kept or cause or permit the Equipment to be so affixed to the premises where the Equipment or any part thereof shall be situated as to become fixtures; and upon request by Aggreko promptly inform Aggreko of the whereabouts of the Equipment;

3.7 perform the daily maintenance of the Equipment in the manner as specified in the Quotation, and not alter the Equipment or remove any existing components of the Equipment or carry out any repair work in relation to the Equipment unless otherwise permitted by Aggreko in writing;

3.8 keep and provide accurate, complete and current records of all maintenance carried out to the Equipment and shall permit Aggreko or its authorized representative to examine such records at any time upon reasonable notice. Such records in the possession of the Hirer and relating to the Equipment shall be the property of Aggreko and, upon the termination or expiry of the Term or upon repossession or return of the Equipment, the Hirer shall deliver the same in accordance with Clause 5 hereof;

3.9 not sell or offer for sale, assign, subletting, pledge, mortgage, encumber, or part with possession or control of or otherwise deal with the Equipment or any interest therein or create or allow to be created any lien on the Equipment or any part thereof whether for repair or otherwise;

3.10 notify Aggreko promptly of any loss, damage to, or defect in the Equipment or of the necessity of any repair or adjustment to the Equipment to ensure that the same is in proper working order. Notwithstanding the foregoing, Aggreko may, at its own discretion, decide whether the Equipment requires repair and the appropriate method if decided so upon receipt of such notice;

3.11 give Aggreko immediate notice in the event that the Equipment is levied upon or is about to become liable to or is threatened with seizure, and indemnify Aggreko against all losses and damages caused by such action;

3.12 duly and punctually pay all taxes, duties, license fees and other charges, made or levied by any government or competent authority in connection therewith or otherwise arising from this Agreement

and/or payable in respect of the premises where the Equipment is situated and produce all receipts for such payments to Aggreko on demand and

3.13 cause to be affixed to the Equipment any plates or marks as may be provided by Aggreko indicating that the Equipment is the property of Aggreko and permit such plates or marks to remain so affixed and not obliterate, deface or cover up the same. Aggreko shall at all reasonable times have access to the Equipment for the purpose of ensuring the compliance with this clause.

3.14 to replace all missing unit or damaged components thereof with a component of the same type or by a component of the like make and model to that which has been removed or an improved or advanced version thereof and to be solely responsible for any loss or destruction of or any damage to the Equipment or any part thereof occasioned in any manner or by whomsoever or by any cause whatsoever, including fair wear and tear and lawful forfeiture and save as aforesaid, during the Term, no alteration shall be made to the Equipment and no existing component shall be removed from the Equipment without the prior written consent of Aggreko, unless replaced immediately by a component of the same type or by a component of the like make and model to that which has been removed or an improved or advanced version thereof. The Hirer hereby undertakes that all substitution, replacements, renewals and additions, whenever made, made in or to the Equipment shall be or thereby become the property of Aggreko.

4 INSURANCE

4.1 The Hirer shall insure the Equipment, at its own expense, in the joint names of Aggreko and the Hirer in respect of their respective rights and interest under a "Property All Risks Insurance Policy" for not less than the full replacement value of the Equipment, a "Transport Insurance Policy" against any loss or damage to the Equipment itself arising from any unexpected or accidental cause both on the road and in use of the Hirer's site and a "Third Party Liability Insurance" against any loss or damage to a third party.

4.2 The Hirer shall cause Aggreko to be a named insured on the insurance policies as described above to the full extent of its interest in the Equipment. The Hirer shall punctually pay all premiums payable under the policies and do everything necessary to maintain the policies in full force and effect, containing such terms, conditions and exceptions as Aggreko would require as if Aggreko had arranged the insurance associated with terms stating that all the payments under the policies shall be made directly to Aggreko.

4.3 The Hirer shall indemnify Aggreko for any excess in respect of any claim made on the insurance contemplated under Clause 4.1.

4.4 The Hirer shall not take any action for the purpose of recovering and/or compromising in the respective names of Aggreko and the Hirer any claim under any policies or policies of insurance for any loss or damage to the Equipment or any third party, without the prior written consent of Aggreko. The Hirer shall not do, permit or suffer any act, matter or thing whereby any insurance with respect to the Equipment may be prejudiced, vitiated, affected or invalidated.

5 DAMAGE WAIVER

5.1 If the Hirer pays the Damage Waiver, then Aggreko will, subject to Clause 5.2, rectify at its own cost the following damage to the Equipment:

- (a) Dents, scratches, chips or cracked glass;
- (b) Blistered or discoloured paint or graffiti; or
- (c) Other minor damage;

To the extent that the cost of rectification is less than 10% of the total replacement value of the Equipment or JPY700,000, whichever is less.

5.2 The Damage Waiver will not apply to damage caused by or due to:

- (a) Misuse, abuse or overloading of the Equipment;
- (b) Lack of lubrication or failure to comply with Aggreko's servicing requirements;
- (c) By overloading or artificial electrical current, use of underrated extension leads or electrical powered tools, machines or automatic voltage regulators; or
- (d) The Hirer breaching these Terms and Conditions.

5.3 If the cost of rectifying the damage to the Equipment is greater than the amount covered under the Damage Waiver, the Hirer must pay the difference and any other amount required to be paid under these Terms and Conditions within 14 days of inspection;

5.4 It is clarified for the avoidance of doubt that in the event the Equipment is damaged beyond repair, then the Hirer shall make good the loss by paying Aggreko the full replacement cost for the Equipment so damaged;

5.5 Aggreko will inspect the Equipment upon return and will provide the Hirer with details of any damage or loss within 14 days of inspection.

6 RETURN OF EQUIPMENT

6.1 Unless otherwise provided in the Quotation, the Hirer covenants to deliver the Equipment to Aggreko in good and substantial repair and operating condition (fair wear and tear excepted) upon the expiration or early termination of this Agreement, to such address as designated by Aggreko, and all costs of transportation of the Equipment (including costs of removing any fixtures and all dismantling costs) and of such delivery shall be borne by the Hirer who shall be responsible for the continued insurance of the Equipment (on terms which comply with Clause 4 hereof) until such time as delivery is made to Aggreko's premises.

6.2 If the Hirer fails to return the Equipment promptly to Aggreko for any reason whatsoever not attributable to Aggreko, the Hirer shall be liable for the full cost of replacement of the Equipment at the prevailing market price and the Rate for the Equipment until full payment of the replacement costs is made to Aggreko.

7 INDEMNITY

7.1 The Hirer shall indemnify and hold Aggreko, its employees, servants and agents harmless from and against all actions, claims, costs, expenses (including legal fees), penalties, damages, liabilities, proceedings, judgments and direct or indirect losses, that any of them may incur, or in connection with any claim, proceeding, action or investigation in relation thereto, arising from or in connection with:

- (a) any breach by the Hirer of any provisions of this Agreement (or any obligations hereunder), including but not limited to ascertaining the whereabouts of the Equipment, taking possession of the Equipment, preserving, insuring and/or storing the Equipment thereafter, and of any legal proceedings taken by or on behalf of Aggreko to enforce the provisions of this Agreement;
- (b) the hiring, use, operation and storage of the Equipment (including any fuels provided with the Equipment) by the Hirer under this Agreement, including (but not limited to):

- (i) any loss, damage or destruction (partial or total) to the Equipment regardless of cause (fair wear and tear excepted save where any insurance moneys are rendered irrevocable in consequence of any act or default of the Hirer); including seizure or other legal process or any other cause including forfeiture;
- (ii) any loss or damage of any kind whatsoever suffered incurred by any third party; and
- (iii) any liability, additional liability, claim for payment, assessment or recovery of any tax or duty payable by Aggreko, or loss of allowances or deductions whatsoever which Aggreko may howsoever incur under the provisions of relevant laws and regulations governing taxation by reason of use of the Equipment by the Hirer other than as stated by the Hirer, by reason of any change or alteration on the basis of taxation or in the interpretation or construction of the provisions of the above mentioned laws and regulations whether or not in force at the time of or after the date of this Agreements; or by reason of any laws and regulations, rule or order or provision which may come into force after the date of this Agreement.

provided that this indemnity shall not apply in the event of fraud or willful acts by Aggreko or any of its employees, or with respect to any liability for death or personal injury arising from the willful acts or gross negligence of Aggreko or of any of its employees.

7.2 The Hirer assumes all risks and liabilities for the use, operation and storage of the Equipment and any personal injury to or deaths of persons (save where caused by Aggreko's willful acts or gross negligence) and damage to property however arising from or incidental to such use operation or storage whether such injury to or death of persons be of agents or employees of the Hirer or of third parties and such damage to property be of the Hirer or of others. The Hirer shall save and hold Aggreko and its employees, servants and agents harmless from all losses, damages, claims, penalties, liabilities and expenses (including legal costs or any indirect, consequential or economic loss or damage arising out of or in connection with any act or omission of Aggreko) howsoever arising or incurred because of or incidental to the use, operation or storage or alleged use, operation or storage of the Equipment.

7.3 In no event shall Aggreko be liable for any indirect, consequential, incidental, special or punitive damages arising out of or in connection with this Agreement or the Equipment, including, without limitation, breach of any obligation imposed on Aggreko hereunder or in connection herewith. For purposes of this Agreement, such damages shall include, without limitation, loss of production, goodwill, income or profit, or any loss of or any damages to property.

7.4 This Clause 7 shall remain in full force and effect notwithstanding the termination of this Agreement, whether by expiration of the time, by operation of law, or otherwise.

8 THIRD PARTY

Where the Equipment is lost, stolen, destroyed or damaged by the negligence or wrongful act of a third party, the Hirer shall immediately notify Aggreko thereof, shall not enter into any negotiations or compromise any claim made by or against a third party without the consent of Aggreko, shall, if so required by Aggreko, allow Aggreko to take over the conduct of any negotiations (except in relation to claims of the Hirer for personal injuries, or any loss of or damage to the property of the Hirer unrelated to the Equipment) and shall, if so required by Aggreko and to the extent permissible under applicable laws, at its own expense, take such proceedings (in the Hirer's sole name or jointly with Aggreko) as Aggreko

shall direct holding all sums recovered together with any moneys received by the Hirer under any policy of insurance taken out by the Hirer pursuant to the provisions of this Agreement on trust for Aggreko and paying or applying as Aggreko directs such part thereof as is necessary to discharge the Hirer's liability to Aggreko at the date of such payment and to compensate Aggreko for the loss, theft or destruction of or damage to the Equipment, any surplus being retainable by the Hirer for its own benefit.

9 TERMINATION

- 9.1** Aggreko shall have the right, without prejudice to any pre-existing liability owed by the Hirer to Aggreko, to terminate this Agreement forthwith by giving seven (7) days written notice of such termination to the Hirer upon the occurrence of any of the following events:
- (a) if the Hirer shall default in the payment of the Rental Fee or any part thereof or any of the sums payable hereunder, for seven (7) days after the same shall become due;
 - (b) if the Hirer shall fail to observe or perform any of the other terms and conditions of this Agreement whether expressed or implied on the part of the Hirer to be observed or performed;
 - (c) if any cheque given by or on behalf of the Hirer to Aggreko is not honoured;
 - (d) if the Hirer shall be in breach of any representation, warranty or statement which is made by the Hirer in this Agreement or is contained in any certificate, statement or document provided under or in connection with this Agreement or otherwise entered into between Aggreko and the Hirer, on part of the Hirer to be performed or observed;
 - (e) if any judgment of any court or arbitrator against the Hirer shall remain unsatisfied for more than fourteen (14) days;
 - (f) if the Hirer shall abandon the Equipment;
 - (g) an order is made, proceedings are commenced or an effective resolution is passed or analogous proceedings are taken for the liquidation or winding-up (whether compulsory or voluntary) of the Hirer (being a company) or proceedings are commenced or an order is made for the judicial management of the Hirer (being a company);
 - (h) if the Hirer becomes insolvent or is unable to pay its debts as they fall due, the Hirer proposes or enters into a general assignment or any scheme of arrangement or a composition with its creditors or ceases to carry on its business or any material part of its business;
 - (i) an encumbrancer takes possession or a receiver or a judicial manager or other similar officer is appointed of the whole or any part of the assets of the Hirer (being a company) or a distress or execution is levied or enforced upon or sued out against the whole or any part of the undertaking, assets or property of the Hirer and is not discharged within seven (7) days of being levied;
 - (j) bankruptcy or other analogous proceedings are commenced against the Hirer (being an individual) and such proceedings are not withdrawn within seven (7) days;
 - (k) at Aggreko's discretion, the breakdown of the Equipment is substantial and beyond repair to recover the original functions.
- 9.2** Notwithstanding Clause 9.1, Aggreko has the right to terminate this Agreement by giving seven (7) days written notice to the Hirer.
- 9.3** This Agreement may be terminated in writing by mutual agreement of Aggreko and the Hirer at any time.

10 CONSEQUENCES OF TERMINATION

- 10.1** Upon termination of this Agreement for any reason whatsoever:
- (a) The Hirer shall immediately surrender the possession of the Equipment to Aggreko (together with all records referred to in Clause 3.6) and Aggreko shall be entitled forthwith to retake the possession of the Equipment without prejudice to any other provision herein. For the purposes of retaking possession (at the cost of the Hirer) of the Equipment, Aggreko (including its servants and agents) may with prior notice to Hirer enter any and all premises on or in which the Equipment is or is believed by Aggreko to be situated, to recover that Equipment and for this purpose the Hirer hereby grants to Aggreko an irrevocable permission to enter any premises owned or leased by the Hirer for the purpose of removing the Equipment and Aggreko shall not be held liable for any damage caused thereby or in connection therewith (including any damage caused in the removal of any fixtures) unless such damage is caused by Aggreko's willful acts or gross negligence; and
 - (b) all payments due to Aggreko from the Hirer shall become immediately payable and the Hirer shall make all such payments together with any interest incurred (if any) as are necessary.
- 10.2** Termination of this Agreement under any circumstances shall not abrogate, impair, release or extinguish any debt, obligation or liability of one party to the other party which may have accrued hereunder including, without limitation, any such debt, obligation or liability which was the cause of termination or arose out of such cause or was consequent upon a termination of this Agreement.
- 10.3** All covenants and warranties of the Hirer, which by their terms or by reasonable implication (such as the above Clause 5), shall be performed in whole or in part after the termination of this Agreement shall survive such termination.
- 10.4** Notwithstanding anything contained in this Agreement or as a result of any conduct of Aggreko at any time in respect of the Hirer, Aggreko shall not be liable upon termination of this Agreement to make any payment, repayment or compensation to the Hirer howsoever arising.
- ## 11 TITLE TO EQUIPMENT
- 11.1** The Equipment (including any additions, replacements, attachments, accessories and repairs at all times made to or placed upon the Equipment) shall at all times remain the sole and exclusive property of Aggreko and nothing contained in this Agreement shall confer or be deemed to confer any right or interest in or to the Equipment on the Hirer except, subject to the Hirer having complied with all its obligations hereunder, the right to quiet possession and to use the same in accordance with this Agreement. This Agreement is personal to the Hirer and shall not be assignable by the Hirer who shall not assign, mortgage charge, encumber or deal with this Agreement or its interest herein or hereunder or attempt or purport so to do. Aggreko may assign, mortgage, charge, encumber or deal with its interest in the Equipment or hereunder.
- 11.2** As between the Hirer and Aggreko and their respective successors, the Equipment shall remain the personal property and shall continue in the ownership of Aggreko notwithstanding that the same may have been affixed to any land, vessel or building. The Hirer shall undertake all things reasonably necessary (including obtaining written waiver of all rights of Aggreko of the land, vessel or building on which the Equipment is installed) in order to safeguard ownership of the Equipment. Aggreko or its agents may, with prior written notice, retake or repurchase the Equipment and, for that purpose, enter any lands, vessels or buildings on or in which the Equipment is or is believed by Aggreko or its agents to be situated and if the Equipment or any part thereof is affixed to such lands, vessels or buildings, Aggreko shall be entitled to sever the same therefrom and to remove the Equipment or part thereof so severed and the Hirer alone shall be responsible for all damage caused to the land, vessel or building by such removal.

12 CONDITIONS OF EQUIPMENT

The Hirer shall take the Equipment in the condition as inspected by the Hirer and delivered to the Hirer pursuant to this Agreement and that Aggreko does not in any way represent or warrant that the Equipment is of satisfactory quality or suitable or fit for the particular or any purpose for which it is intended or may be required by the Hirer and the description of the Equipment in this Agreement is for identification only and is not a condition of this Agreement. Without prejudice to the generality of the foregoing and the provisions of Clause 12, the Hirer acknowledges and agrees with Aggreko that the Equipment is of a size, design and capacity and manufacture selected by the Hirer, that the Hirer is satisfied that the Equipment is suitable for its purposes and that the Equipment is accepted by the Hirer with all faults and defects (if any) and delivery shall be conclusive evidence that the Equipment is in good and substantial repair and operating condition.

13 NO LIABILITY

- 13.1** The Hirer acknowledges that, in entering into this Agreement, it does not do so on the basis of or in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and accordingly all conditions, warranties or other terms implied by law or otherwise as to the capacity, age, quality, description, condition, merchantability, suitability or fitness of the Equipment for any purpose or otherwise whatever are hereby excluded to the fullest extent permitted by law. Save in the case of fraud or willful acts or gross negligence, neither Aggreko nor any of its employees, servants or agents shall be liable for any loss or damage (whether direct or indirect) arising in contract or in tort (which shall include but not be limited to, negligence liability and liability arising from breach of statutory duty but shall not include liability for death or personal injury arising from the willful acts or negligence of Aggreko or of any of its employees) sustained by the Hirer or by any third party making a claim against the Hirer, whether caused directly or indirectly by the Equipment or any inadequacy thereof for any purpose or by reason of any defect in the Equipment or any part thereof whether such defect be latent or apparent upon examination, or by the use thereof, to the fullest extent permitted by law.
- 13.2** Save for the circumstances provided in the Quotation, Aggreko shall not be liable for any expense in repairing the Equipment or be liable to supply equipment in lieu if the Equipment is lost or damaged or rendered unfit for use or confiscated, seized, requisitioned, restrained or appropriated, and the Rate shall continue to be payable notwithstanding such loss, damage or other event unless and until the Equipment is declared by insurers or agreed between the parties hereto to be a total loss subject to the Hirer having fulfilled all its obligations under Clause 4.
- 13.3** Aggreko shall not be liable for any indirect, consequential, incidental, special or punitive damages arising out of or in connection with this Agreement or the Equipment as under Clause 7.3.

14 REMEDIES AND NON-WAIVER

No right or remedy conferred by any of the provisions of this Agreement on Aggreko is intended to be exclusive of any other right or remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other right or remedy shall be cumulative and shall be in addition to every other right or remedy given hereunder or now or hereafter existing at law, in equity or otherwise. The Hirer agrees that no relaxation, forbearance, delay or indulgence by Aggreko in enforcing any of the terms and conditions of this Agreement or the granting of time by Aggreko to the Hirer shall prejudice, affect or restrict the rights and powers of Aggreko hereunder nor shall any waiver by Aggreko of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof. No time or indulgence or waiver of its rights under this Agreement granted or purporting to be granted by Aggreko shall affect Aggreko's interest or rights in the Equipment or under this Agreement or shall constitute a waiver or release of any breach committed by the Hirer unless such interest, rights or breach, as the case may be, shall be expressly waived by Aggreko in writing.

15 SEVERABILITY

If any provision of this Agreement or any part thereof is rendered void, illegal or unenforceable by any law to which it is subject, such provision shall be deemed to be severed from this Agreement and the parties shall replace such provision with one having an effect as close as possible to the deficient provision. The remaining provisions will remain in full force in that jurisdiction and all provisions will continue in full force in any other jurisdiction.

16 AMENDMENT AND VARIATION

No amendment or variation of this Agreement shall be effective unless made in writing and signed by and on behalf of each of the parties.

17 NOTICES

Any notice required or permitted to be given hereunder shall be given in writing both in the Japanese and English language delivered personally or sent by pre-paid post or facsimile transmission to the party due to receive such notice at its address as set out in the quotation (or such other address as it may have notified to the other parties in accordance with this Clause). A communication shall be deemed to have been served: (i) if delivered by hand, at the time of delivery, (ii) if sent by pre-paid post, on the second business day after the time of posting and (iii) if sent by facsimile transmission to the correct facsimile number of the addressee (with a confirmatory transmission report or other acknowledgment of good receipt), at the time of delivery. In proving service of a communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a pre-paid letter or that the facsimile transmission was dispatched and a confirmatory transmission report or other acknowledgment of good receipt was received (including confirmation by email).

18 ENTIRE AGREEMENT

This Agreement means, in respect of any Quotation, the rental agreement between Aggreko and the Hirer constituted by the Quotation and these Terms and Conditions (as from time to time amended, modified or supplemented) and constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement and excludes any terms or conditions stipulated by the Hirer and any representations, warranties or communications not expressly incorporated in this Agreement.

19 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of Japan and the Hirer irrevocably submits to the non-exclusive jurisdiction of the Tokyo District Court. Such submission shall not preclude the right of either party to bring proceedings in any other court of competent jurisdiction.