

Topdeck Scaffolding Pty Ltd – Terms & Conditions of Hire

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| 1. | <p>1.1 Definitions "TDS" means Topdeck Scaffolding Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Topdeck Scaffolding Pty Ltd.</p> <p>1.2 Client means the Client or any person acting on behalf of and with the authority of the Client, as specified in any invoice, document or order, and if there is more than one Client is a reference to each such jointly and severally.</p> <p>1.3 Equipment means all Equipment (including any accessories) supplied on hire by TDS to the Client and (where the contract includes an incidental supply of services (including, but not limited to, the erecting and/or dismantling of the Equipment)). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by TDS to the Client.</p> <p>1.4 Minimum Hire Period means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by TDS to the Client.</p> <p>1.5 Price means the cost of the hire of the Equipment as agreed between TDS and the Client subject to clause 4 of this contract.</p> | 8.4 | <p>the Equipment nor permit it to be used in such a manner as would permit an insurer to decline to claim for the Equipment or to pay less than the full value of the Equipment.</p> <p>The Client expressly accepts full responsibility for and shall keep TDS indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.</p> <p>Should any alterations be made to the Equipment (including scaffolding ties) by any person other than an employee of TDS then TDS shall not be liable for any losses, damages, injuries or claims that may arise from the Client's or any third parties subsequent use of the Equipment.</p> <p>Where the Client expressly requests TDS to leave Equipment outside TDS's premises for collection or delivery the Goods and/or Equipment to an unattended location then such Goods and/or Equipment shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods and/or Equipment are insured adequately or at all.</p> | 13.4 | <p>TDS may repossess the Equipment as per clause 9.2, or suspend or terminate the supply of Equipment to the Client for any of its other obligations under the terms and conditions of this contract.</p> <p>TDS will not be liable to the Client for any loss or damage the Client suffers because TDS has exercised its rights under this clause.</p> <p>Without prejudice to TDS's other remedies at law TDS shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies. TDS may have and all amounts owing to TDS shall, where not due for payment, become immediately payable in the event that:</p> <ol style="list-style-type: none"> any money payable to TDS becomes overdue, or in TDS's opinion the Client will be unable to meet its payments as they fall due; or the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of creditors; or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client. |
| 2. | <p>2.1 Acceptance The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts delivery of, the Equipment.</p> <p>These terms and conditions may only be amended with TDS's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and TDS.</p> <p>In the event that the Client or Client's representative is not available on the site at the completion of the day to sign TDS's 'Handover Certificate' and/or 'Labour Docket' shall be deemed accepted by TDS.</p> | 9.1, 9.2 | <p>9.1 Title The Equipment is and will at all times remain the absolute property of TDS, and the Client must return the Equipment to TDS upon request to do so.</p> <p>If the Client fails to return the Equipment to TDS as is required under this agreement or when requested to do so, then TDS or TDS's agent may (as the trustee of the Client) enter upon and into any land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by TDS as a result of TDS so repossessing the Equipment shall be charged to the Client.</p> | 14.1, 14.2 | <p>14.1 Security and Charge In consideration of TDS agreeing to supply Equipment, the Client charges all of its rights, title and interest (whether joint or several) and real and personal assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>The Client indemnifies TDS from and against all TDS's costs and disbursements including legal costs to a solicitor and own client basis incurred in exercising TDS's rights under this clause.</p> <p>The Client irrevocably appoints TDS and each director of TDS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.</p> |
| 3. | <p>3.1 Change in Control The Client shall give TDS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number, or business structure). The Client shall be liable for any loss incurred by TDS as a result of the Client's failure to comply with this clause.</p> | 10.1, 10.2 | <p>10.1 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA) The Client must inspect the Equipment on delivery and must within seven (7) days of delivery notify TDS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow TDS to inspect the Equipment.</p> <p>Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>TDS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, TDS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment.</p> <p>In respect of the Client's use of the Equipment, TDS does not warrant, either expressly or impliedly, that the Client is a consumer within the meaning of the CCA. TDS's liability is limited to the extent permitted by section 64A of Schedule 2.</p> | 14.3 | <p>14.3 Privacy Act 1988 The Client agrees for TDS to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by TDS.</p> <p>The Client agrees that TDS may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <ol style="list-style-type: none"> to assess an application by the Client; and/or to notify other credit providers of a default by the Client; and/or to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or to assess the Client's creditworthiness in relation to the Client's credit. <p>The Client understands that the information exchanged can include anything that the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.</p> <p>The Client consents to TDS being given a consumer credit report to collect overdue payment and comments on TDS Section 194(1)(h) Privacy Act 1988.</p> <p>The Client agrees that personal credit information provided may be used and retained by TDS for the following purposes (and for other purposes as shall be agreed between the Client and TDS or required by law from time to time):</p> <ol style="list-style-type: none"> the provision of Equipment on Hire; and/or the marketing of services by TDS, its agents or distributors; and/or analysing, verifying or checking the Client's credit, payment and/or status in relation to the provision of Equipment on hire; and/or processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the hire of the Equipment. <p>TDS may give information about the Client to a credit reporting agency for the following purposes:</p> <ol style="list-style-type: none"> to obtain a consumer credit report about the Client; to allow the credit reporting agency to create or maintain a credit information file containing information about the Client; to provide the Client's credit information to the credit reporting agency may include: |
| 4. | <p>4.1 Price and Payment At TDS's sole discretion the Price shall be either:</p> <ol style="list-style-type: none"> as indicated on invoices provided by TDS to the Client in respect of Equipment supplied on hire; or TDS's current Price, at the date of delivery of the Equipment, according to TDS's current Price list; or TDS's quoted Price (subject to clause 4.2) which shall be binding upon TDS provided that the Client shall accept in writing TDS's quotation within twenty-eight (28) days. <p>TDS reserves the right to change the Price in the event of a variation to TDS's quotation.</p> <p>TDS must be in receipt of the signed relevant TDS Acceptance Form prior to the commencement of any works.</p> <p>TDS's quotation is based on all services associated with the Equipment being carried out between the standard working hours of TDS, which are 7am to 3.30pm Monday to Friday. Any services required to be performed outside these hours by the Client shall incur overtime charges.</p> <p>Where TDS's services are required on site, day labour shall be charged for at four (4) hours for up to four (4) hours work and at eight (8) hours for over four (4) hours work if carried out during TDS's normal working hours and will be charged at TDS's standard day labour rate of \$65.00 + GST an hour per man.</p> <p>Additional charges for delays of disruption (not caused by or as a direct result of the actions of TDS or TDS's employee or sub-contractors) will be charged to the Client at TDS's standard day labour rate.</p> <p>At TDS's sole discretion a deposit may be required.</p> <p>At TDS's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to TDS.</p> <p>TDS reserves the right to charge for any work carried out over and above the agreed contract regardless of whether a Day Labour Docket or Site Instruction is obtained at the time.</p> <p>Craneage required to assist in the erection or dismantling of Equipment shall be at the Client's expense and in addition to the Price of the hire of the Equipment unless otherwise agreed in writing.</p> <p>Time for payment for the Equipment being of the essence, the Price will be payable by the Client on the date/s determined by TDS, which may be:</p> <ol style="list-style-type: none"> prior to delivery; or for certain approved Clients by instalments in accordance with TDS's payment schedule; or for certain approved Client's thirty (30) days following the date of the invoice; or the date specified on any invoice or other form as being the date for payment; or failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by TDS. <p>Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), or by any other method as agreed between the Client and TDS.</p> <p>Receipt by TDS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, TDS reserves the right to retain retentions as placing the Client's account into default.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to TDS an amount equal to any GST TDS must pay for any supply by TDS under this or any other agreement for the sale or hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> | 10.3, 10.4, 10.5, 10.6, 10.7, 10.8 | <p>10.6 If TDS is required to rectify, repair, or pay the cost of re-supplying any services or Equipment under the clause of the CCA, but is unable to do so, then the owner may, without any monetary penalty, terminate the hire of the Equipment but only to the extent that the owner shall take into account the value of the services or Equipment and consumables which have been provided to the Client which were not defective.</p> <p>If the Client is not a consumer within the meaning of the CCA, TDS's liability for any defect or damage in the services or Equipment is:</p> <ol style="list-style-type: none"> limited to the value of any express warranty or warranty card provided to the Client by TDS; and limited to any warranty to which TDS is entitled, if TDS did not manufacture the Equipment; otherwise negated absolutely. <p>Notwithstanding clauses 10.1 to 10.7 but subject to the CCA, TDS shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:</p> <ol style="list-style-type: none"> the Client failing to properly maintain the Equipment; the Client interfering with the Equipment in any way without TDS's written approval to do so; the Client using the Equipment for any purpose other than that for which it was designed; the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user; the Client failing to follow any instructions or guidelines provided by TDS; fair wear and tear, any accident, or act of God. | 14.4, 14.5, 14.6, 14.7, 14.8, 14.9, 14.10, 14.11, 14.12, 14.13, 14.14, 14.15 | <p>14.4 Personal Property Securities Act 2009 ("PPSA") In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>Upon assenting to these terms and conditions in writing the Client acknowledges and agrees to these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by TDS to the Client.</p> <p>The Client undertakes to:</p> <ol style="list-style-type: none"> promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TDS may reasonably require; register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register; register any other document required to be registered by the PPSA; or correct a defect in a statement referred to in clause 17.3(a)(i) or 17.3(a)(ii); <p>and</p> <ol style="list-style-type: none"> indemnify and reimburse TDS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby; not register a financing change statement in respect of a security interest without the prior written consent of TDS; not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of TDS; <p>TDS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>Unless otherwise agreed to in writing by TDS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>The Client must unconditionally ratify any actions taken by TDS under clauses 17.3 to 17.5.</p> <p>Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> |
| 5. | <p>5.1 Hire Period Where the Client collects the Equipment from TDS's premises hire charges shall commence from the time the Equipment leaves TDS's premises and continue until the Client notifies TDS that the Equipment is available for collection, and/or until the expiry of any Minimum Hire Period, whichever last occurs.</p> <p>Where TDS is to deliver the Equipment then hire charges shall commence from when the equipment is delivered to the Client's nominated delivery address.</p> <p>For clauses 5.1 to 5.3 the signed relevant 'TDS Off Hire Form' to be returned to TDS's office to notify TDS of the completion of hire.</p> <p>Where TDS is to both deliver and erect the Equipment then hire charges shall commence on the completion of the erection of the Equipment (or the occupation of any part of the Equipment) and shall continue until TDS receives the relevant TDS Off Hire Form.</p> <p>The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.</p> <p>No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless TDS confirms special prior arrangements in writing.</p> | 11.1, 11.2 | <p>11.1 Client's Responsibilities The Client shall:</p> <ol style="list-style-type: none"> notify TDS immediately by telephone of the full circumstances of any damage or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification; maintain TDS on the exact location of the Equipment including required distance from fence, road, etc. satisfy itself at commencement that the Equipment is suitable for its purposes; use the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by TDS or posted on the Equipment; ensure that all persons erecting and/or dismantling the Equipment are suitably trained in the safe and proper use of the Equipment, hold a current Certificate of Competency and/or are fully licensed to erect and/or dismantle the Equipment and shall provide evidence of the same to TDS upon request; comply with all occupational health and safety laws relating to the Equipment and its use; allow TDS's employees or sub-contractors to use the Client's onsite amenities; termination of the hire deliver the Equipment complete with all parts and accessories clean and in good order as delivered (fair wear and tear accepted), to TDS by 3.30pm on the day the Equipment is due for return; keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment; not alter, modify, make any additions to the Equipment (including, without limitation, altering or making any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment) or in any other manner interfere with the Equipment; employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work; not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any frehold; be responsible for the raising/lowering/moving of hop-up brackets and associated planking as required and the cost of the same; obtain and pay for all Council, Engineers, and other local and statutory authority's approvals and fees where applicable unless otherwise agreed in writing between both parties to this agreement; supply, erect and remove on completion any warning lights/signing/protective casings/hearding/barriers and signage in public access areas in accordance with Health and Safety requirements; cover all electrical wiring within a five metre radius of the Equipment; organise and pay for any works required by Energy Australia including the insulation (tiger tailing) of overhead powerlines if they are to be within four (4) metres of any part of the erected scaffolding. Please contact your local energy provider; organise and pay for any pedestrian and/or traffic control that is required to enable the erection and/or dismantling of the Equipment; provide a minimum of five (5) working days notice to TDS if TDS is required to erect the Equipment and understands that the dismantling of the Equipment will happen on the first (1st) available day after notification of the Off Hire of the Equipment; make good, clean, level ground for continuous sole boards; make provisions for scaffolding ties at the required positions and waterproof the same if required. To ensure this obligation is fulfilled, the Client may be required to notify TDS to assist to leave windows open for scaffolding ties; <p>Immediately on request by TDS the Client will pay:</p> <ol style="list-style-type: none"> the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to TDS; all costs incurred in cleaning the Equipment; all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment; the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent; the cost of repairing any damage to the Equipment caused by vandalism, or (in TDS's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client. | 14.11, 14.12, 14.13, 14.14, 14.15, 14.16, 14.17, 14.18, 14.19, 14.20, 14.21, 14.22, 14.23, 14.24, 14.25, 14.26, 14.27, 14.28, 14.29, 14.30, 14.31, 14.32, 14.33 | <p>14.11 Building and Construction Industry Security of Payments Act 1999 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.</p> <p>Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.</p> <p>14.19 General The Client agrees that TDS to enforce any provision of these terms and conditions shall be treated as a waiver of that provision, nor shall it affect TDS's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable for whatever reason, the validity, enforceability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which TDS has its principal place of business, and are subject to the jurisdiction of the Many courts in that state.</p> <p>Subject to clause 10 TDS shall have no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by TDS of these terms and conditions (alternatively TDS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment that is the subject of the breach).</p> <p>The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by TDS nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>TDS may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>The Client agrees that TDS may amend these terms and conditions at any time. If TDS makes a change to these terms and conditions, then that change will take effect from the date on which TDS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for TDS to provide any Equipment to the Client.</p> <p>The Client shall not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p> |
| 6. | <p>6.1 Delivery of the Equipment At TDS's discretion delivery of the Equipment shall take place when:</p> <ol style="list-style-type: none"> the Client takes possession of the Equipment at TDS's address; or the Client takes possession of the Equipment at the Client's address; or the Client's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be the Client's agent and risk for the Equipment passes to the Client immediately that the Equipment is loaded on the carriers transport vehicle. <p>Where TDS is to deliver the Equipment then the cost of delivery is included in the Price, however delivery charges have been quoted on the basis of full truck loads delivering and unloading Equipment during normal working hours with an allowance of one (1) hour on site for loading or unloading. Waiting time after the first hour will incur an additional charge.</p> <p>Where TDS is to deliver the Equipment the Client shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. TDS's quotation includes one delivery to, and one pick-up from, the work site (unless otherwise agreed in writing). Any additional deliveries, re-deliveries or pick-ups will incur additional costs.</p> <p>Where TDS is responsible for erecting or dismantling the Equipment TDS's quotation shall include one erection and dismantle only (unless otherwise agreed in writing). Any additional erecting or dismantling requested by the Client shall be charged for at TDS's standard day labour rates.</p> <p>TDS may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.</p> <p>Delivery of the Equipment to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.</p> <p>Any time or date given by TDS to the Client is an estimate only. The Client must still accept delivery of the Equipment by the date and TDS will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.</p> <p>TDS is to be notified 48hrs prior to the dismantle of scaffold to arrange collection. If TDS is not notified 48 hrs before then any fines incurred by Council (or other authorities) for scaffold on the nature strip will be payable by the Client.</p> | 12.1, 12.2 | <p>12.1 Cancellation TDS may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice TDS shall repay to the Client any sums paid in respect of the Price. TDS shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event that the Client cancels delivery of the Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by TDS as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> | 14.21, 14.22, 14.23, 14.24, 14.25, 14.26, 14.27, 14.28, 14.29, 14.30, 14.31, 14.32, 14.33 | <p>14.21 Default and Consequences of Default Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and TDS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>If the Client owes TDS any money the Client shall indemnify TDS from and against all costs and disbursements incurred by TDS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TDS's collection and bank disbursements).</p> <p>Without prejudice to any other remedies TDS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire</p> |