

FUJIKURA EUROPE LIMITED - TERMS AND CONDITIONS OF HIRE AND LOAN

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms the following words and expressions have the meanings given to them below:

Agreement the agreement pursuant to which FEL agrees to Hire or Loan the Equipment to the Hirer and consisting of these Terms, the Order Form and in any document expressly referred to in the Order Form, all of which shall supersede all previous communications and agreements in relation to the supply of the Equipment;

Business Days a day (other than a Saturday, Sunday or public holiday in England) when banks in London (or in the case of delivery of Equipment or notices, when banks in the place or receipt) are open for business and **Business Hours** shall be 9.00am to 5.00pm on a Business Day;

Delivery has the meaning given in clause 5.2;

Delivery Date the date and time stated on the Order Form for delivery of the Equipment;

Due Date the due date for payment of FEL's invoices shall be the date stated on the Order Form, or if not stated, [30] days from the date of FEL's invoice;

Equipment the fibre optic splicing and cleaving equipment and/or any other equipment hired to the Hirer, as stated on the Order Form, together with any case and accessories supplied with it;

FEL Fujikura Europe Limited, a company registered in England with company number 02237808;

Hire has the meaning given in clause 3.1;

Hire Period the period stated on the Order Form as the period of hire of the Equipment;

Hirer the person identified in the Order Form to whom the Equipment is being hired;

IPRs all registered and unregistered intellectual property rights owned by FEL relevant to the Equipment including all patents, trade marks, copyright, inventions, know-how and trade secrets and processes;

Loan has the meaning given in clause 3.6;

Order Form the order form generated by FEL setting out the Equipment details, price, duration and other terms of hire;

Price the price agreed for the hire of the Equipment, as stated on the Order Form;

Site the address provided on the Order Form where the Equipment will be stored and used during the Hire Period;

Terms these terms and conditions.

- 1.2 References in the Agreement to:

- 1.2.1 the singular include the plural and vice versa;
- 1.2.2 one gender includes all genders;
- 1.2.3 any law is a reference to it as it is in force from time to time as amended or re-enacted;
- 1.2.3 "including" and similar expressions shall not limit the generality of any prior or following words and
- 1.2.4 "writing" or "written" include fax and e-mail unless FEL states otherwise.

- 1.3 Clause headings shall be ignored in interpreting these Terms.

2. THE AGREEMENT

- 2.1 The Agreement constitutes the only terms and conditions on which FEL will supply Equipment for hire or loan.
- 2.2 No Agreement exists until FEL has issued an Order Form.
- 2.3 These Terms shall apply to each Agreement unless and to the extent stated otherwise in the Order Form.
- 2.4 No other terms or variation shall apply unless agreed in writing and signed on behalf of FEL.

3. HIRE AND LOAN

- 3.1 FEL agrees to hire the Equipment to the Hirer for the Hire Period at the Price and upon and subject to the terms of the Agreement (**Hire**).
- 3.2 The Hirer acknowledges that the Equipment remains at all times the property of FEL and title and ownership shall not pass to the Hirer at any time.
- 3.3 FEL shall not, otherwise than in the exercise of its rights under this Agreement or any applicable law, interfere with the Hirer's quiet enjoyment of the Equipment during the Hire Period.
- 3.4 The Hirer may during the Hire Period return the Equipment to FEL to replace the electrodes or carry out any necessary repairs. The costs of return and any replacement electrodes or other maintenance and repairs shall be paid by the Hirer unless shown to be the fault of FEL.
- 3.5 The Hirer shall return the Equipment to FEL in good condition on or before the expiry of the Hire Period, failing which FEL shall be entitled to charge an additional Hire Fee equal to 120% of FEL's standard [daily] Hire Fee then applying for every day the Equipment is not returned and if not returned within [30] days of the end of the Hire Period FEL shall in addition be entitled to charge the Hirer FEL's full list price for the Equipment.
- 3.6 Where the Equipment is provided free of charge (other than the costs of delivery and or return) (**Loan**) these Terms shall apply as if references to "Hire" were to "Loan", except that clauses [3.3, 4.1, 4.3, 4.4] shall not apply.
- 3.7 The Hirer shall not hire or loan the Equipment to any other person (**Sub-Hirer**) without FEL's prior written consent and only after ensuring that it enters into contractual terms with such Sub-Hirer which give the Hirer and FEL at least the same rights as FEL has under the Agreement. Notwithstanding FEL may give its consent to a sub-hire arrangement, the Hirer shall in all circumstances remain liable to FEL in the event of any loss or damage to the Equipment or other act or omission on the part of the Sub-Hirer.

4. PRICE AND PAYMENT

- 4.1 The Hirer shall pay the Price to the Hirer in pounds sterling (£) on the Due Date without any deduction, set-off or withholding.
- 4.2 Where the Equipment is provided on Loan it will be supplied free of charge. FEL reserves the right to charge for delivery of loan Equipment in exceptional circumstances. In all cases the Hirer is responsible for returning the Equipment to FEL at the end of the Hire Period.
- 4.3 The Price shall not include VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.
- 4.4 If at any time after the Order Form is received by FEL, there shall be a rise or fall in any costs relating to the Equipment and its delivery to the Hirer and such an increase affects FEL's cost of performing the terms set out in the Agreement, FEL shall be entitled to make the corresponding adjustment to the quoted price.
- 4.5 Subject to clause 3.4, if the Hirer fails to make any payment due to FEL under the Agreement by the Due Date, then, without limiting the FEL's remedies under clause 8, the Hirer shall pay interest on the overdue amount at the rate of [4]% per annum above Natwest'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, and be paid with the overdue amount.

5. DELIVERY

- 5.1 FEL shall endeavour to deliver the Equipment by either courier or post to the Site during Business Hours on or before the Delivery Date. Delivery by the Delivery Date is not guaranteed and if undelivered by the Due Date FEL shall deliver the Equipment within a reasonable time thereafter.
- 5.2 A duly authorised representative of the Hirer shall be present at the delivery of the Equipment. Acceptance of delivery by the Hirer by way of its duly authorised representative signing a receipt confirming such acceptance shall constitute conclusive evidence that the Hirer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (**Delivery**).

6. HIRER'S OBLIGATIONS

6.1 The Hirer shall, during the term of this agreement:

- 6.1.1 ensure that the Equipment is kept and operated in a safe and suitable environment, used only for the purposes for which it is designed, and operated in a safe and proper manner by trained and competent staff in accordance with any operating instructions provided by FEL;
- 6.1.2 keep the Equipment in good condition (fair wear and tear excepted) and not alter the Equipment or remove any labels or parts from the Equipment without the prior written consent of FEL;
- 6.1.3 keep the Equipment in the possession or under the control of the Hirer and at a location where FEL can exercise all of its rights under the Agreement;
- 6.1.4 permit FEL or its duly authorised representative during normal Business Hours to inspect the Equipment and (if the Hirer is in breach of the Agreement) to retake possession of the Equipment.

7. RISK AND INSURANCE

- 7.1 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery and shall remain with the Hirer until the Equipment is returned to FEL in good condition (fair wear and tear excepted).
- 7.2 From Delivery until the Equipment is returned to FEL the Hirer shall, at its own expense, insure the Equipment for not less than its full replacement value (as stated on the Order Form) against theft and all usual risks of loss, damage or destruction whether deliberate or accidental. The Hirer shall ensure that FEL's interest is noted on the policy and the Hirer shall do or fail to do anything which may invalidate such insurance. If requested by FEL the Hirer shall provide a copy of such insurance to FEL.
- 7.3 If the Hirer fails to insure the Equipment as required under clause 7.2 FEL shall be entitled to insure the Equipment itself and recharge the cost of doing so to the Hirer.

8. TERMINATION

- 8.1 FEL may immediately, on giving written notice to the Hirer, terminate the Agreement without payment of compensation if:
 - 8.1.1 the Hirer fails to pay an invoice relating to the Equipment on or before the Due Date
 - 8.1.2 the Hirer commits a material or persistent breach or breaches of any other term of the Agreement which is irremediable or (if remediable) the Hirer fails to remedy that breach within a period of not less than [7] days after being notified in writing to do so;
 - 8.1.3 the Equipment is lost, stolen, seized, confiscated or in FEL's reasonable opinion or the opinion of its insurer(s), damaged beyond repair;
 - 8.1.4 the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits an inability to pay its debts;
 - 8.1.5 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 Hirer;
 - 8.1.6 a receiver or administrative receiver is appointed over the whole or any part of the Hirer's assets; or
 - 8.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Hirer.
- 7.4 Upon expiry or termination of the Agreement however it arises the Hirer shall forthwith return the Equipment to FEL, failing which FEL may enter any premises where the Equipment is located and retake possession of the Equipment and the Hirer shall pay to FEL any costs FEL incurs in recovering the Equipment.
- 7.6 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties which arise on or are expressed to continue after termination or expiry or that have accrued up to the date of termination or expiry, including the right to

claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

9. LIMITED WARRANTY

- 9.1 FEL warrants that the Equipment will during the Hire Period be of satisfactory quality, in good working order and fit for the purpose for which it was designed.
- 9.2 Upon being given reasonable notice FEL shall at its discretion repair or replace any Equipment not satisfying the foregoing warranty or refund that part of the Price as is equal to the pro-rata proportion of the unexpired Hire Period, provided that:
 - 9.2.1 the Equipment is returned to FEL (at the Hirer's cost) so FEL may make a full examination of the Equipment; and
 - 9.2.2 upon such examination it is apparent the defect did not materialise as a result of misuse, neglect, alteration, mishandling or any repair or maintenance of the Equipment carried out by any person not authorised by FEL.
- 9.3 Apart from the express warranty given under clause 9.1 FEL gives no other express warranty under the Agreement and subject to clause 10 hereby excludes to the fullest extent permissible at law any warranties that may be implied into the Agreement.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in the Agreement shall exclude FEL's liability to the Hirer for:
 - 10.1.1 death or personal injury resulting from FEL's negligence or the negligence of any person for whom it is vicariously liable;
 - 10.1.2 any breach of FEL's obligations implied by [sections [7 to 10] of the Supply of Goods and Services Act 1982;
 - 10.1.3 any defective products under the Consumer Protection Act 1987 where the Hirer is a consumer under that Act;
 - 10.1.4 any fraud or fraudulent misrepresentation of FEL or the fraud or fraudulent misrepresentation by any person for whom it is vicariously liable; or
 - 10.1.5 any other matter which it would be illegal for FEL to exclude or attempt to exclude its liability.
- 10.2 Subject to clause 10.1, FEL's maximum aggregate liability for loss of or damage to tangible property caused by its negligence or act or omission shall be limited to Yen100,000,000.
- 10.3 Without prejudice to clause 10.1 FEL shall not be liable under this agreement for any:
 - 10.3.1 loss of profit;
 - 10.3.2 loss of revenue or savings;
 - 10.3.3 loss of business;
 - 10.3.4 loss of goodwill or
 - 10.3.4 any indirect or consequential loss or damage,in each case, however caused, even if foreseeable.

11. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for [90] days or more, the party not affected may terminate this agreement by giving [14] days written notice to the affected party provided that if in that period the affected party is able to resume performance then such notice shall not take affect.

12. GOVERNING LAW

The 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.

13. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising