



Terms & Conditions of Rental of Equipment

NON DESTRUCTIVE TEST EQUIPMENT LTD

1. DEFINITIONS

1.1 In these Conditions, the following definitions apply:

“**Additional Charges**” has the meaning set out in clause 12.1;

“**Business Day**” means a day (other than a Saturday, Sunday or a public holiday) when banks in England are open for business;

“**Conditions**” means the terms and conditions set out in this document;

“**Contract**” means the contract between Sercal and the Customer for the rental of Equipment;

“**Customer**” means the person, firm or company who hires the Equipment from Sercal;

“**Equipment**” means any apparatus, material or equipment (including all accessories supplied either as part of a kit or as standard with the main unit) as set out in the Order;

“**Sercal**” means Sercal NDT Equipment Limited (registered in England and Wales with Company Number 3733273);

“**Order**” means the Customer’s order for the Equipment, as set out in the Customer’s purchase order form;

“**Rental Payment(s)**” means the payment(s) made by or on behalf of the Customer for the hire of the Equipment and as set out in the Order;

“**Rental Period**” means the period of hire set out in clause 3; and

“**Risk Period**” has the meaning set out in clause 5.3.

2. ACCEPTANCE

2.1 The 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.

2.2 The Order constitutes an offer by the Customer to hire the Equipment in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Sercal issues a written acceptance of the Order (“written” for this purpose including email), at which point the Contract shall come into existence.

2.4 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 Sercal which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by Sercal and any descriptions or illustrations contained in Sercal’s catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.

2.6 Fitness for use is for the Customer to determine, no performance objective is expressed or implied by Sercal. The Equipment may appear to offer comparable or similar specifications to other manufacturers’ products but will not necessarily perform identically to such other manufacturers’ products.

2.7 A quotation for the Equipment given by Sercal shall not constitute an offer. A quotation shall only be valid for a period of thirty (30) days from its date of issue and shall be subject to availability of the Equipment.

3. RENTAL PERIOD

3.1 The Rental Period shall be as set out in the Order, unless the Contract is terminated earlier in accordance with these Conditions.

3.2 The Rental Period may be extended by mutual written agreement of both parties (“written” for this purpose including email) and the daily rate set out in the Order shall apply to any extended Rental Period.

3.3 If the Rental Period has not been extended in accordance with clause 3.2 and the Equipment is not returned to Sercal on the return date set out in the Order, the Customer will be charged at the daily rate set out in the Order until the Equipment has been returned to Sercal.



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4. DELIVERY

- 4.1 Sercal shall deliver the Equipment to the location set out in the Order or such other location as the parties may agree at any time after Sercal notifies the Customer that the Equipment is ready for delivery.
- 4.2 Delivery dates quoted by Sercal are approximate only, and the time of delivery is not of the essence. It is expressly agreed that Sercal shall not be liable to the Customer for any delay in delivery or of the condition of the Equipment or otherwise.

5. TITLE

- 5.1 The Equipment shall at all times remain the property of Sercal, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these Conditions).
- 5.2 The Customer shall give Sercal immediate notice in the event the Equipment is lost, stolen or damaged as a result of the Customer's possession or use of the Equipment or if there is a claim or, for any reason, a threat of seizure of the Equipment.
- 5.3 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery of the Equipment to the Customer, or where applicable, the Customer's appointed agent. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer ("Risk Period") until such time as the Equipment is returned to Sercal.

6. TRAINING

- 6.1 The Customer represents and acknowledges that he has requisite knowledge and experience to operate the Equipment.
- 6.2 Sercal representatives may be called upon to provide start up operator training for the Customer, if necessary and requested by the Customer. For the avoidance of doubt, the cost of start-up operator training is not included in the Order and will be quoted separately upon request.

7. LIABILITY AND EQUIPMENT BREAKDOWN

- 7.1 In the event that the Equipment experiences a breakdown due to any defect in materials or workmanship, Sercal's liability shall be limited to the cost of repair, including parts and labour, to return the Equipment to full working order.
- 7.2 Sercal may, at its sole discretion, extend the Rental Period at no cost to the Customer for the time required to replace or repair the Equipment. Sercal shall not be obligated to bear the costs of Customer's labour or standby time in connection to any breakdown, nor any costs related to the delay of Customer projects.
- 7.3 Without prejudice to clause 7.4, Sercal's maximum aggregate liability for breach of the Contract (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, delict (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the cost of fulfilling its obligation under clause 7.1.
- 7.4 Nothing in these Conditions shall exclude or in any way limit Sercal's liability for:
- (a) death or personal injury caused by its own negligence or the negligence of its employees, agents or subcontractors (as applicable); or
 - (b) fraud or fraudulent misrepresentation.
- 7.5 These Conditions set forth the full extent of Sercal's obligations and liabilities in respect of the Equipment and its hiring to the Customer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on Sercal except as specifically stated in these Conditions. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.
- 7.6 Sercal shall not be liable to the Customer for any:
- (a) loss of profit;
 - (b) loss of revenue;
 - (c) loss of business;
 - (d) indirect or consequential loss or damage,
- in each case, however caused, even if foreseeable.



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8. OBLIGATIONS OF THE CUSTOMER

8.1 The Customer shall during the term of the Contract:

- (a) at its expense and at all times during the Rental Period, keep and maintain the Equipment in good and substantial repair, condition and appearance in order to keep it in as good an operating condition as it was on the commencement date of the Contract (fair wear and tear only accepted);
- (b) use all Equipment only for the purposes for which it was designed and operate in a careful, prudent manner and in accordance with the instructions for use;
- (c) comply with all laws, regulations, rules or ordinances of lawfully constituted authorities relating to the possession, use, storage and transport of the Equipment;
- (d) maintain effective control of the Equipment and keep the Equipment in a secure and suitable environment when not in use;
- (e) ensure that the Equipment is operated only by suitably competent persons, duly instructed on its safe operation in accordance with manufacturer's operating manuals, instructions and safety warnings;
- (f) obtain any required licenses or other authorisations necessary for the use, registration or handling of a specific piece of equipment or technology, and ensure that it complies fully with all relevant legal requirements. Sercal reserves the right to request proof of any such authorisations prior to the commencement of the Rental Period;
- (g) (where applicable) obtain any required licenses or other authorisations necessary for export, re-export and the return of the Equipment;
- (h) ensure that no unauthorised transfers or diversions of the Equipment occurs;
- (i) if the Equipment is being transferred to countries where any regulatory authority requires details of the intended use of the Equipment, the Customer shall upon request, provide Sercal with an "End User Statement";
- (j) where applicable, not allow the Equipment to be transferred to countries prohibited by the Department of Trade or the U.S Bureau of Foreign Commerce;
- (k) not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon the Equipment or any warnings or documentation thereon;
- (l) not copy or reproduce in any way or manner the Equipment or any part or component of the Equipment;
- (m) not perform, or allow any person to perform, any work in or upon or make modifications, changes, alterations or repairs to the Equipment other than routine daily maintenance;
- (n) allow Sercal or its representatives 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, and shall grant reasonable access and facilities for such inspections;
- (o) keep the Equipment free from any liens, claims, charges and encumbrances during the Rental Period;
- (p) keep Sercal fully informed of all material matters relating to the Equipment;
- (q) deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract at such address as Sercal requires, or if necessary allow Sercal or its representatives access to the site or any premises where the Equipment is located for the purpose of removing the Equipment. The Customer shall pack the Equipment utilising the standard packaging materials, where applicable; and
- (r) not do or permit to be done anything which could invalidate the insurances referred to in clause 10.

9. INDEMNITY

9.1 The Customer agrees to indemnify and hold Sercal and its directors, officers, employees and agents, harmless from and against all liability and expenses (including legal costs on a full indemnity basis) howsoever arising or incurred, in respect of:

- (a) loss of or damage to property of the Customer whether owned, leased or hired, arising from, relating to or in connection with the performance or non-performance of the Contract; or
- (b) injury to, or death of any person employed or engaged by the Customer arising from, relating to or in connection with the performance or non-performance of the Contract.

10. INSURANCE

10.1 During the Rental Period and the Risk Period, the Customer shall, at its own expense, provide and maintain the following insurances:



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- (a) insurance of the Equipment against loss by all risks of physical loss or damage by fire, theft or accident, in an amount equal to the full replacement value;
 - (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as Sercal may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and howsoever arising in connection with the Equipment; and
 - (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such insurance as Sercal may from time to time consider reasonably necessary and advise to the Customer.
- 10.2 All insurance policies procured by the Customer shall be endorsed to provide Sercal with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon Sercal's request name Sercal on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 10.3 The Customer shall give immediate written notice to Sercal 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.
- 10.4 The Customer shall, upon request of Sercal, provide Sercal with certificates of insurances evidencing the coverage required at clause 10.1. If the Customer fails to place or maintain insurances or provide satisfactory evidence thereof Sercal may refuse to provide the Equipment. If the Customer is self-insured, it shall furnish, upon request, written evidence of such fact to the satisfaction of Sercal. The provision of any insurance required herein does not relieve the Customer of any responsibilities or obligations outlined in the Contract or for which the Customer may be liable by law or otherwise.
- 11. PAYMENT TERMS**
- 11.1 Sercal shall invoice the Customer for the Rental Payment(s) in accordance with the Order.
- 11.2 The Customer shall make payment within thirty (30) days of the date on the invoice received from Sercal, unless credit terms are made available to the Customer by Sercal.
- 11.3 The final invoice amount will be based on the actual return date of the Equipment. If the Equipment is returned later than the return date specified in the Order, the Customer will be charged at the daily rate set out in the Order until the Equipment has been returned to Sercal.
- 11.4 If the Customer fails to make any payment due to Sercal under the Contract by the due date for payment, then, without limiting Sercal's remedies under clause 12, the Customer shall pay interest on the overdue amount at the rate of 2.5% per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after decree. The Customer shall pay the interest together with the overdue amount.
- 11.5 For any Rental Period exceeding thirty (30) days, Sercal shall be entitled to invoice the Customer in arrears, at the end of each complete month.
- 11.6 Upon return of the Equipment the final invoice will be prepared and submitted and will represent the outstanding charges for the total Rental Period, as well as any applicable charges.
- 11.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 11.8 Any dismantling, packaging, transportation and/or shipping charges not included in the Contract, shall be borne by the Customer.
- 12. ADDITIONAL CHARGES**
- 12.1 In addition to the Rental Payment(s) specified in the Order, Sercal has in the relevant circumstances the right to apply additional charges:
- (a) for loss of or damage to the Equipment as a result of any failure by the Customer to comply with these Conditions;
 - (b) if the Equipment is damaged and it can be repaired, for loss of rental income during the period the Equipment is being repaired, provided such additional charges shall cease when the Equipment is returned to full working order;
 - (c) if the Equipment is damaged and cannot be repaired (i.e. it is written off) or the Equipment is lost or stolen, for loss of rental income during the period from the date the Equipment is damaged, lost or stolen to the date Sercal receives an amount equal to full replacement value of the Equipment;
 - (d) for outward delivery and/or collection of the Equipment, including any dismantling, packaging, transportation and shipping charges; and



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- (e) for Sercal's packaging materials if such materials are not returned to Sercal at the end of the Rental Period or on earlier termination of the Contract;

12.2 Sercal shall invoice the Customer for any Additional Charges in accordance with clause 11 and VAT (and any other applicable taxes) shall be applied to any Additional Charges.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, Sercal may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than five (5) Business Days after being notified to make such payment;
- (b) the Customer commits a material breach of any other term of the Contract and either such breach cannot be remedied or (if such breach can be remedied) fails to remedy that breach within a period of five (5) Business Days after being notified to do so;
- (c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (e) 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 Customer (being a company);
- (f) 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 Customer (being a company);
- (g) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (h) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (i) any event analogous to (c) to (g) inclusive, occurs in relation to any other legal jurisdiction.

14. CONSEQUENCES OF TERMINATION

14.1 Upon termination of the Contract, however caused:

- (a) Sercal's consent to the Customer's possession of the Equipment shall terminate and Sercal may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the site or any premises at which the Equipment is located; and
- (b) the Customer shall pay to Sercal on demand:
 - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 11.4;
 - (ii) any costs and expenses incurred by Sercal in recovering the Equipment and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

14.2 Upon termination of the Contract pursuant to clause 13.1 or any other repudiation of the Contract by the Customer which is accepted by Sercal, without prejudice to any other rights or remedies of Sercal, the Customer shall pay to Sercal on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Rental Period.

14.3 Termination or expiry of the Contract shall not affect any rights, remedies or obligations of Sercal that have accrued up to the date of termination or expiry, 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.

15. GENERAL

15.1 Assignment and other dealings

- (a) Sercal may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Sercal.



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15.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the 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, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2 (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.3 Severance

- (a) 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.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.4 Waiver

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

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 in writing and signed by Sercal.

15.6 Governing Law

The Contract, 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, English Law. Each party irrevocably agrees that the courts of England 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).