

**HIRE ASSOCIATION EUROPE LIMITED
GUIDANCE NOTES TO ASSIST IN THE USE AND INCORPORATION
OF STANDARD CONDITIONS OF HIRE AND SALE
For use with V2 that takes effect from October 2022**

IMPORTANT

PLEASE READ THE FOLLOWING NOTES CAREFULLY AND ACT ON THEM BEFORE USING THE NEW HAE MODEL CONDITIONS FOR HIRE AND SALE OF GOODS TO CONSUMERS AND BUSINESSES (HEREAFTER CALLED THE TERMS AND CONDITIONS). FAILURE TO DO SO COULD RESULT IN THE TERMS AND CONDITIONS HAVING NO LEGAL EFFECT.

Section One of these guidance notes explains how to correctly use and incorporate the HAE terms and conditions for Hire and Sale of Goods into your business procedures. Section Two explains how to complete and if needed bespoke the terms and conditions, Section Three provides a summary checklist and Section Four provides a Model Cancellation Form.

You should make sure you read the HAE terms and conditions carefully. Questions concerning these should be directed to the Legal Support Helpline. Details can be obtained from HAE Membership Services: 44 (0) 121 380 4600.

It should be noted that the HAE terms and conditions are chiefly intended for hire contracts and the sale of low value ancillary products. They are not intended for use primarily in relation to the sale of products or for the sale of significant value and/or volume products.

Please also note that the duration of the hire of goods to individuals or partnerships must be restricted to three months to avoid being regulated by the Consumer Credit Act. Clause 5.1 of the terms and conditions provides that any such contract shall be deemed to have automatically terminated in order to avoid the legislation applying but this should not preclude taking care to ensure the hire is limited to three months maximum. If it exceeds this you may not be able to enforce the contract. The terms and conditions are intended to be used for hire contracts in England and Wales, the Republic of Ireland, Northern Ireland and Scotland.

The new terms and conditions can be used for both businesses and consumers.

SECTION ONE

1. GENERAL

1.1 It is vital that you incorporate the terms and conditions into any contracts that you make for the hire and/or sale of your products and/or services. If you do not, your terms of business will not form part of the contract. As a result, you will be unable to rely on them or seek legal enforcement.

1.2 A contract can be made orally, electronically or in writing. It will come into existence as soon as agreement is reached on the most important issues such as the identity of the products and/or services involved. It is not always even necessary to agree on the price, as the courts may be prepared to imply certain terms, including the price to be paid.

1.3 These notes are designed to assist you with the implementation of the terms and conditions so that they form a binding part of the contract you are making.

2. STATIONERY

2.1 You **MUST** do as much as possible to draw your terms and conditions to the customer's attention before the contract is formed.

2.2 This is assisted by your terms and conditions being printed and/or hyperlinked on as many pre-contractual documents and locations as possible. This could include:

- quotation forms;
- order forms;
- order acknowledgement forms;
- hire forms; and/or
- hire catalogues (where appropriate).
- Publishing them on your website
- Hyperlinks linked back to your website on email footers
- Displayed in full at your shop counter

2.3 Where terms and conditions are printed on the reverse of a document, it is important to state clearly on the front of the document that important terms of business which will affect the other party's rights are set out on the reverse of the document. This warning should be printed prominently so that your customer's attention is clearly drawn to your terms of business.

2.4 Wherever possible, you should obtain your customer's signature agreeing that your terms of business apply or if offsite an electronic confirmation after allowing your customer to scroll down then using something like DocSign or, failing that, an email confirmation. This may reduce the potential for future dispute as to whether your conditions apply to the contract and/or were accepted by the customer. You may wish to use the following suggested wording:

[I confirm that I am authorised on behalf of the customer to enter into this contract.] [On behalf of the customer] I accept that the hire of the goods is subject to the terms and

conditions printed on the reverse of this form. I confirm that I have read and understood the terms and conditions.

2.5 The words in brackets should be deleted where the contract is with an individual acting in his/her personal capacity.

3. ORAL CONTRACTS

3.1 A valid and binding contract can be made by oral means, e.g. by telephone or in person. Staff should make it clear that the contract is subject to your terms and conditions before the contract is concluded. Standard scripts can be used to ensure that staff adhere to this practice. You may also wish to consider having a proforma order form which staff complete to confirm that they have informed the customer that the contract will be subject to your terms and conditions. Where the contract is made by telephone you have the legal right to record the call and keep it as legal evidence, but you should inform customers that calls are recorded for security and training purposes and also replicate this on your Privacy Policy.

3.2 Where possible your terms and conditions should be supplied to the customer in advance of the contract being formed and at the time it is formed. If this is not possible, they should be sent to the customer as soon as possible after the contract has been made and at the latest when the goods are delivered.

3.3 In a hire outlet situation it will also be beneficial to display readable copies of your terms and conditions within the shop so that, if they wish, customers have the opportunity to study them before hiring goods.

4. POSTAL, EMAIL, FAX AND WRITTEN CONTRACTS

4.1 The aim is to ensure that your terms and conditions appear on the last document to pass between you and your customer before the contract is concluded. This is in an attempt to win the so-called “battle of the forms”. The “battle of the forms” effectively provides that “he who fires the last shot wins”. This means that the terms and conditions contained in the last document passing between two parties before a contract is concluded will usually be those which apply to the contract.

4.2 As a result, if you send out a quotation with your terms and conditions and you receive a purchase order containing the purchaser’s terms and conditions, in order to win the “battle of the forms”, it is important that you take some action. Either send back an order acceptance form containing your own terms of business, or bring it to the customer’s attention in some other way that you do not accept its terms and conditions and that the contract is to be subject to your terms and conditions.

4.3 Where orders are placed by a customer by post, email or even fax, and particularly where the order refers to the customer’s standard terms of business, you should ensure that the order is acknowledged and accepted together with a reference to it being accepted on your terms and conditions.

4.4 Acceptance can be oral and standard scripts should be used to ensure that staff adhere to the standard acceptance procedure together with some note or evidence of this. Where the acceptance is by email, fax or post, standard letters of acknowledgement can be used. A copy of your terms and conditions should also be sent with this response.

4.5 It is also helpful to try to avoid returning any documents originating from your customers and to always respond to any terms put forward by your customer with a document which contains or refers to your own terms and conditions of business.

4.6 You could do this, for instance, by adopting a procedure whereby orders placed by a purchaser are stamped by your employee with a rubber stamp stating: “accepted on *[INSERT YOUR COMPANY NAME]*’s terms and conditions of business” and a scanned copy is then emailed back to your customer.

5. TIMING

5.1 Please note that putting terms and conditions on the back of invoices is too late in the sales cycle as you must demonstrate that your customer knew or ought to have known them before they entered into the contract

5.2 This is because the invoice is sent after the contract itself has been entered into resulting in the standard conditions being treated as a post-contractual document.

5.3 Terms and conditions of business are however often printed on invoices as their presence can, in certain limited circumstances, be helpful in establishing a course of dealing on your terms and conditions and can be referenced for future orders.

6. CREDIT ACCOUNTS

6.1 You may also find it helpful to devise a form which is sent to all new customers to set up a credit account. This works especially well with business customers who provide repeat business.

6.2 This form would seek details of the customer, such as its full name and in the case of a company its registered number and registered office, details of trade references and other relevant information. Such information is useful when chasing late payment.

6.3 This form would be accompanied by your terms and conditions of business and would contain a paragraph stating that your customer accepted that your terms and conditions would apply in all contracts between you and the customer to the exclusion of all other terms and conditions. The form would need to be signed by the customer to open an account with you but this would, at the same time, mean they were accepting your terms and conditions.

7. CONSUMERS AND BUSINESSES

7.1 The terms and conditions developed by HAE for members cover both business and consumer hire. However, it is important to note that a number of the exclusions and/or limitations as well as other terms are not enforceable against consumers due to the extra rights extended to consumers.

7.2 Similarly, even in a business hire context, exclusions and/or limitations may not be enforceable if they are not reasonable.

8. DEALING WITH CONSUMERS

8.1 A “consumer” is an individual acting for purposes which are wholly or mainly outside that individual’s trade, business craft or profession. The law imposes numerous additional obligations on you when you do business with consumers.

8.2 What your obligations are in relation to consumers will depend on how (and where) you agree a contract with a consumer customer. The three types of contracts are:

- **On-premises contracts** – broadly speaking, contracts concluded at your place of business in the presence of the consumer;
- **Off-premises contracts** – including:
 - contracts concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader.
 - contracts for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer in a place which is not the business premises of the trader.
 - contracts concluded either:
 - on the business premises of the trader, or
 - through any means of distance communication, immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer.
 - contracts concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer.
- **Distance contracts** – a contract concluded under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

As can be seen, the definitions of each type of contract are complex and it is difficult to be certain as to whether a particular contract falls within one or other category (and therefore what obligations apply to you in each instance).

8.3 We therefore recommend that you treat all consumers as falling within the category which imposes the widest obligations on you and offers most protection to consumers i.e. off-premises contracts. The reason for this is that, if you take this approach, any potential risks for you (and your employees personally) are minimised. This is the approach that has been adopted in the drafting of the HAE model terms and conditions.

8.4 If your business is run on the basis that all or most of your contracts with consumers would be defined as “on-premises” contracts, then the wider obligations may not apply to you.

Pre-contractual Information

8.5 When you deal with consumers you must provide them with various pieces of information **before** entering into a contract with them. This information must be provided in a durable form i.e. in a letter, email or as part of a larger document such as a price list or quotation. If you do not provide all the necessary information then a consumer can sue you for breach of contract.

8.6 The table overleaf identifies:

- the pre-contractual information which must be provided;
- whether it is provided for in the terms and conditions; and
- if so, the clause in the terms and conditions where you will find it.

Pre-Contractual Information	In the terms and conditions?	Location
Main characteristics of the goods and/or services	No	---
Your identity (such as your name, address, company number etc.)	Yes, but your input is required	1.1
Total price of the services or how it will be calculated	No	---
Where applicable, details of additional delivery charges and other costs and/or how they will be calculated	No	---
Payment, delivery and performance arrangements	Partially	4 – 20.6
Where applicable, your complaint handling policy	Yes, but your input is required	20.3, 20.12
A reminder that you are under a legal duty to supply goods and/or services that are in conformity with the contract	Yes	3,4
Where applicable, the existence and the conditions of after-sales services and commercial guarantees	N/A	N/A
Duration of the contract and/or the conditions for terminating	Yes	1.1, 10, 15,17
Where applicable, digital content's functionality and technical protection	N/A	N/A
Where applicable, digital content's compatibility	N/A	N/A
Your address and contact details (geographical address, telephone number, fax number and e-mail address)	Yes, but your input is required	1.1, end of the conditions
Where applicable, the address and identity of the other trader for whom you are acting	N/A	N/A

Where you act on behalf of another trader, the geographical address of the place of business of that other trader, where the consumer can address any complaints	N/A	N/A
Costs, where the contract is of indeterminate duration or is a subscription	No	N/A
Cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate	N/A	N/A
Information about the right to cancel	Yes	14
Where applicable, the consumer's obligation to pay for the return of goods	Yes	14.8
The fact that the consumer must pay for services received if he agrees to their supply during the cancellation period	Yes	14.5.1, 14.6.2
Where applicable, the fact that the consumer has no right to cancel or how the right to cancel can be lost	Yes	14.6.2, 14.7, 14.8
Details of applicable codes of conduct and how copies of these can be obtained	N/A	N/A
Where applicable, the minimum duration of the contract	Yes	10 -10.4, 14 – 14.9
Where applicable, details of any consumer deposits and financial guarantees	No	14 – 14.9
Complaint and redress mechanisms	N/A	N/A
A Model Cancellation Form	Yes	See Section Four of these notes

8.7 As you can see, most of the necessary pre-contractual information is already provided in the terms and conditions. However, you will note that at clauses 1.1, 20.3 and at the end of the terms and conditions there are areas highlighted yellow and in square brackets which require your input:

- 1.1 – your company name, registered office, geographical address (if different from your registered office), your company number and VAT number.
- 20.3 – what number and/or e-mail address a consumer can use to contact you to raise a query or make a complaint.
- End of the conditions – your company name, telephone number, email address and if applicable website.

This information is part of the pre-contractual information you must provide consumers with so it is of vital importance that you complete these parts of the conditions.

8.8 You will also note that some information is not provided in the conditions. This is because this particular information will vary from business to business and, as such, you will personally need to ensure that consumers are provided with the following within the time frame detailed below:

- **A description of the main characteristics of the goods and/or services.** This information could be provided in quotations, order forms, hire forms and/or hire catalogues (where appropriate).
- **The total price of the goods and/or services or how it will be calculated.** This information could be provided in a price list. It would also be advisable to confirm the price when acknowledging/confirming the consumer's order.
- **Where applicable, additional delivery charges and other costs and/or how they will be calculated.** As delivery, collection and other additional charges are referred to in the Conditions (see clause 6) you will need to set out how much these charges will be or how they will be calculated. This information could be provided in a price list. It would also be advisable to confirm this information when acknowledging/confirming the consumer's order.
- **Details surrounding payment, delivery and performance arrangements.** You will need to have confirmed with the consumer how much they are going to pay for the goods and/or services and when they will have to pay. You will need to have confirmed who will be delivering and/or collecting the goods and on what date. You will need to have confirmed when any services will be performed. You will need to have confirmed any other arrangements which the consumer requires for the performance of the contract.
- **Details of any consumer deposits and financial guarantees.** As deposits are referred to in the conditions we assume you may wish to require consumers to make a deposit on any goods they hire/purchase from you. If so, you must provide them with details of the deposit, including how much it will be and whether or not it is refundable. This information could be provided when you inform the consumer of the price of the goods and/or services.
- **A Model Cancellation Form.** Consumer legislation now requires that you provide consumers with a model cancellation form which they may use to cancel the contract with you. This form is not the only way a consumer may cancel the contract but it must be provided by you all the same. A model cancellation form is set out in the Appendix to these Guidance Notes. The form also provides the consumer with clear information as to their consumer rights, thus ensuring that you inform consumers who deal with you what their rights are.

8.9 How all this pre-contractual information is provided will depend on your individual contracting process. What is essential is that you provide the conditions to consumers prior to entering into contracts with them and that your contracting process enables you to also provide the additional information set out above. One possibility is to provide the terms and conditions and other pre-contractual information when you send out a quotation or an order form for the consumer to complete.

Consumer Right to Cancel

8.10 Consumers have certain rights to cancel the contract free of charge. The time within which a consumer may exercise their cancellation right for a contract for the provision of goods is within 14 days of the day following the date on which the goods come into the physical possession of the consumer.

8.11 The same cancellation period applies where both goods and services are provided under a contract.

8.12 If a consumer validly exercises their right to cancel then you must refund any sums that they have already paid under the contract:

- within 14 days of receipt of the goods which have been returned by the consumer; or
- (if earlier) within 14 days after the day the consumer provides evidence that they have returned the goods; or
- if no goods have been provided, 14 days after the day on which you are informed of the consumer's decision to cancel the contract.

8.13 However, where the consumer requests in writing that the services be provided within the 14-day cancellation period then they will lose their right to cancel free of charge once the performance of the services is completed. If the consumer cancels the contract once the performance of the services has begun then you may charge them for any costs you have reasonably incurred in performing the services thus far. Please note that this does not preclude you from having to refund the consumer any sums they have already paid under the contract in excess of the costs you have incurred.

8.14 Please note that consumers will not have a right to cancel where:

- the contract is for the supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities; and
- the contract provides for a specific date or period or performance.

8.15 Please be aware that where a consumer exercises their right to cancel and the goods have already been provided to them, the terms and conditions provide that the customer must return the goods to you at their own cost. If this would be impractical for consumers in your line of business, please contact the HAE Legal Helpline for further guidance.

Confirming the Contract

8.16 Before the goods and/or services are provided, you must provide confirmation of the contract to the consumer in writing, via a document, which can be given in person, posted recorded delivery, or sent by email.

Consumer Rights under the Consumer Rights Act 2015

8.17 You will note that clause 3.4 is an effective “catch all” for any new consumer legislation that may come into force from time to time. The most recent piece of consumer legislation is the Consumer Rights Act 2015 (“CRA”) which consolidates the various pieces of consumer legislation

that went before it. Whilst the CRA largely confirms the existing legal position for goods and services in relation to consumers, there are some significant changes which you should be aware of and which, from an operational perspective, may require you to make changes to your business.

Goods

8.18 All goods supplied to consumers should:

- be of satisfactory quality;
- be fit for purpose;
- match the description, sample or model; and
- be installed correctly (if you have agreed to install the goods as part of the contract).

8.19 If the goods do not meet these requirements then consumers have the following rights:

- **Initial Right to Reject.** Consumers may reject the goods within the first 30 days of the contract and will be entitled to a refund (see below). Where, within this 30 day period, the consumer asks you to repair or replace the goods (see below), the 30 day period will be paused.

Once the goods have been repaired or replaced, the 30 day period will continue for 7 days, or longer if more of the initial 30 day period remains.

E.g.1. Goods are delivered to the consumer. After 27 days, the consumer asks you to repair the goods. This takes you two weeks. At the end of that two week period, the consumer will have a further 7 days within which to exercise their initial right to reject.

E.g.2. Goods are delivered to the consumer. After 10 days, the consumer asks you to repair the goods. This takes you two weeks. At the end of that two week period, the consumer will have a further 20 days within which to exercise their initial right to reject.

- **Repair or Replacement.** Consumers may, at any time during the contract, require you to repair or replace the goods at your own cost within a reasonable period of time and without significant inconvenience to the consumer. However, a consumer cannot ask you to carry out one of these remedies where this would be impossible or disproportionate compared to the other of those two remedies.
- **Final Right to Reject or Price Reduction.** Consumers may only exercise one of these rights and only where:
 - after one repair or one replacement, the goods still do not conform to the contract;
 - repair or replacement is impossible or disproportionate; or
 - the repair or replacement has not been carried out within a reasonable period of time and without significant inconvenience to the consumer.

The price reduction can be up to 100% of the value of the goods.

- **Refund.** Consumers are entitled to a refund where they exercise their initial or final right to reject the goods. For hire goods, the refund is in respect of anything paid or otherwise transferred by the consumer for the period of hire that the consumer does not get due to the right to reject being exercised. Refunds must be paid within 14 days of you agreeing that a refund is payable and using the same means of payment as the consumer.

Where the final right to reject is exercised, you may reduce the refund payable to take into account the use the consumer has made of the goods, but only where the right to reject has been exercised after the first 6 months of the contract.

E.g. A consumer hires goods for a period of three months and pays the entire rental fee up front. After 30 days the consumer decides the goods are defective and exercises their initial right to reject the goods. The refund payable to the consumer would be for the proportion of the rental fee which represented the remaining two months of the hire period. However, the consumer may also wish to bring a claim for damages against you for having to use faulty goods for the first month of the hire period.

8.20 Please note that, in addition to the above statutory remedies, consumers can also claim damages, specific performance etc. to compensate them for any other loss which they may suffer.

8.21 The above consumer rights in relation to goods shall not apply where:

- before entry into the contract, defects are brought to the consumer's attention;
- the consumer examines the goods and any defects ought to have been obvious;
- the goods were used for a purpose that was neither obvious nor made known to you; and
- the goods have become defective as a result of fair wear and tear.

Services

8.22 All services provided to consumers should be:

- carried out with reasonable care and skill;
- completed for a reasonable price and within a reasonable period of time (where no timescale is provided);
- completed in accordance with any information said or conveyed in writing to the consumer where the consumer relies on it (this is intended to include quotations, assurances regarding timescales and other information provided to the consumer prior to the contract which induces them to purchase services from you).

8.23 If the goods do not meet these requirements then consumers have the following rights:

- **Repeat Performance of the Services.** Where you:

- fail to exercise reasonable care and skill; or
- do not comply with information you have provided to consumers which relates to the services,

consumers are entitled to require you to re-perform the services at your own cost, within a reasonable period of time and without significant inconvenience to the consumer.

However, this right cannot be exercised where it would be impossible to provide the services in conformance with the contract.

- **Price Reduction.** Where you:

- fail to exercise reasonable care and skill;
- fail to perform the services within a reasonable period of time; or
- do not comply with any information you have provided to consumers,

consumers are entitled to a reduction in the price of up to 100% and any refund for anything already paid above the reduced amount. Refunds must be paid within 14 days of you agreeing that a refund is payable and using the same means of payment as the consumer.

Where both rights are available to the consumer they are only entitled to a reduction in the price where:

- it would be impossible for you to provide the services in conformance with the contract; or
- you fail to repeat the services within a reasonable period of time and without significant inconvenience to the consumer.

8.24 Please note that, provided you perform the services with reasonable care and skill, it is immaterial whether the performance of the services actually achieves the consumer's desired outcome.

8.25 The above consumer rights in relation to services shall not also not apply where:

- the consumer is responsible for things going wrong or has caused the damage it has suffered. For example, where the consumer instructs you to use inappropriate materials or methods or to take shortcuts in order to save money;
- the consumer changes its mind about wanting the services; or
- the faults have appeared as a result of fair wear and tear.

8.26 Please note that, in addition to the above statutory remedies, consumers can also claim damages, specific performance etc. to compensate them for any other loss which they may suffer.

Digital Content

8.27.1 The CRA has introduced a new concept of “digital content” which is separate from goods and services. Digital content is defined as “data which is produced and supplied in digital form”. This means that the physical media that hosts digital content (such as a SIM card, memory stick or a hosting platform) will still be classified as “goods” but the content itself on that media will now be classified as “digital content”. Under the CRA you have specific obligations with regard to any digital content you supply to your consumer customers.

8.27.2 We acknowledge that the provision of digital content by some HAE members is still in its infancy and it will not apply to all members. If this is the case then this section 8.27 can be disregarded.

8.27.3 Under the CRA, it is an implied term of any consumer contract that you have the right to supply any digital content which you offer to your consumer customers. In addition, any such digital content must be:

- of satisfactory quality;
- fit for a particular purpose; and
- as described (including system requirements).

Most computer operating systems or games have minor bugs that are corrected over time with patches or upgrades and this will be tested objectively in considering what is “reasonable” to be deemed acceptable in the context of satisfactory quality.

8.2.1 Where digital content does not conform with the above requirements then consumers will have the following remedies available to them:

- **Repair or Replacement.** Consumers are entitled to require you to repair or replace the digital content at your own cost, within a reasonable period of time and without significant inconvenience to the consumer.

However, a consumer cannot ask you to carry out one of these remedies where this would be impossible or disproportionate compared to the other of those two remedies.

- **Price Reduction:** Consumers may only exercise their right to a price reduction where:
 - repair or replacement is impossible or disproportionate; or
 - the repair or replacement has not been carried out within a reasonable period of time and without significant inconvenience to the consumer.

The price reduction can be up to 100% of the value of the goods and can also include a refund for anything already paid above the reduced amount. Refunds must be paid within 14 days of you agreeing that a refund is payable and using the same means of payment as the consumer.

- **Refund:** where you are found to have breached the implied term that you have the right to supply any digital content offered to your consumer customers, consumers are entitled to a refund in respect of such digital content. As above, refunds must be paid within 14 days of you agreeing that a refund is payable and using the same means of payment as the consumer.
- 8.26.4 It should be noted that any non-conformance identified within the first 6 months of the contract will be deemed to have existed when the digital content was first supplied to the consumer.
- 8.26.5 Please also note that, in addition to the above statutory remedies, consumers can also claim damages, specific performance etc. to compensate them for any other loss which they may suffer.
- 8.26.6 The CRA enables consumers to rely on the above remedies in relation to any “free” digital content you may provide as an add-on to a contract for the hire of goods and/or services e.g. a free software upgrade included with a machine sale.
- 8.26.7 Where digital content causes damage to a device or other digital content owned by the consumer (e.g. file corruption) and this damage would not have been caused had you used reasonable care and skill, then the consumer is entitled to require you to:
- repair the damage at your own cost, within a reasonable period of time and without significant inconvenience to the consumer; or
 - compensate the consumer for the damage with an appropriate payment, such payment to be made within 14 days of you agreeing that a refund is payable.

9 JURISDICTION

- 9.1 There is only one set of HAE model terms and conditions and additional consumer terms and conditions that can be used irrespective of the legal jurisdiction.
- 9.2 The governing law that will apply to a contract will be the law of England and Wales. Where the customer is a business (see 20.13) the Courts of England and Wales will by default of the terms and conditions have exclusive jurisdiction. If the HAE member is based in Scotland or the EU clause 20.13 can be amended to a country of choice. This would then mean that if, say, a hire business is based in Scotland and hires goods to a customer based in England, Scottish law will govern the contract.
- 9.3 Where the customer is a consumer, the customer has the right to bring a claim against the supplier in a court where the consumer lives. The supplier will also have the right to bring a claim against the consumer in their local court.
- 9.4 Please note that specific advice has not been sought from lawyers based in different jurisdictions. Therefore, if you are based outside England and Wales you may wish to obtain

local legal guidance on any amendments required to these model terms and conditions to meet your trading requirements.

SECTION TWO

- 1** The 2022 Conditions for Hire and Sale of Goods to Consumers and Businesses (terms and conditions) should be mostly relatively straightforward to complete.

1.1 'Order': HAE members use different methods for processing orders. This could involve a handwritten order pad, a computer generated order, a purchase order from the customer or some other method. However, many members, even if a customer provides a written order, have a computer generated note that processes the order or a sales order book. Whatever method your business uses to record the transaction should be inserted into [as set out WHERE if not delete] so as an example Where could be changed to read: as set out on the delivery note issued by the Supplier. Or if not applicable please delete: [as set out WHERE if not delete]

'Supplier' insert your company name, the full address of your premises, phone number, website, company registration number and email address.

6.5 The default setting on this is twenty business days' notice regarding cancellation or changes. If you require longer than twenty days' notice please amend as required and remove the twenty.

9.4 Remove Error! if needed and amend to read Clause 9.2.

20.3 insert a customer service team phone number (or your depot phone number) and a relevant email address.

20.13 Insert your company name, address, phone number, company registration number, email address and preferably website (allowing access to your Privacy Policy).

SECTION THREE

When implementing the terms and conditions please cross reference with the checklist below:

- 1 Insert into the various highlighted sections of the new terms and conditions the information requested, see Section Two for more guidance.
- 2 Please put the terms and conditions on your website and also ensure any earlier versions have been deleted from the website.
- 3 If you have a trade counter consider putting a readable format version of the terms and conditions at the front.
- 4 Amend all stationery such as delivery notes, order processing paperwork etc so that the terms and conditions are printed on the back of any customer facing paperwork.
- 5 Ensure people have to sign delivery notes, order generated paperwork etc to confirm they have read the terms and conditions, please see Section One 2.4 for more details.
- 6 Consider how best you can inform customers about the updating of your terms and conditions. For customers with a trade account you could send a copy and covering note with their monthly statements, which can be posted or emailed. Remember, you don't need permission to email because it is a transactional email, if the business has a trade account.
- 7 Please read Section 8 in detail and ensure that you and your team understand the extra legal rights that consumers enjoy.
- 8 Consider having a team training day covering both trade and consumers. Ensure everyone understands the 14 day cooling off period for consumers when they have ordered goods online or over the phone.
- 9 Regularly review the terms and conditions (e.g. every six months) to see that they are working.

- 10 When setting up trade accounts consider having a section where the customer is required to sign and accept your terms and conditions of trade.
- 11 Please ensure that customers don't impose their own terms and conditions on your business, by ensuring that any orders are acknowledged and accepted on your own terms, which you will need to send to the customer, please see Section One 2.4 for more details.

These notes are provided as a guide to the procedures to ensure your terms and conditions are correctly applied to all business and consumer transactions.

If you have any queries, please contact the HAE Legal Helpline.

Updated October 12 2022 V2

SECTION FOUR

Appendix – Model Cancellation Form

Your Right to Cancel

You have the right to cancel this Contract without giving any reason within 14 days of the day following the date on which you receive the goods.

To exercise the right to cancel, you must inform us, (**Banner Plant Limited, Callywhite Lane, Dronfield, S18 2XS** phone: **01246 299400**; e-mail: **Dronfield@bannerplant.co.uk**) of your decision to cancel this Contract by a clear statement (e.g. a letter sent by post or e-mail). You may use the model cancellation form below, but it is not obligatory.

To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

Effects of cancellation

If you cancel this Contract, we will reimburse you all payments received from you, including the costs of delivery.

We may make a deduction from the reimbursement for loss in value of any goods supplied, if the loss is the result of unnecessary handling by you. Please note that if you wish to return unwanted goods, you will have to do so at your own expense.

We will make the reimbursement without undue delay, and not later than –

- (a) 14 days after the day we receive back from you any goods supplied, or
- (b) (if earlier) 14 days after the day you provide evidence that you have returned the goods, or
- (c) if there were no goods supplied, 14 days after the day on which we are informed about your decision to cancel this contract.

We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.

If you requested to begin the performance of services during the cancellation period, you shall pay us an amount which is in proportion to what has been performed until you have communicated to us your cancellation of this contract, in comparison with the full coverage of the contract.

Model Cancellation Form

To (**Banner Plant Limited, Callywhite Lane, Dronfield, S18 2XS** phone: **01246 299400**; e-mail: **Dronfield@bannerplant.co.uk**)

I/We [*] hereby give notice that I/we [*] cancel my/our [*] contract of sale of the following goods [*]/for the supply of the following service [*,

Ordered on [*/received on [*,

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper)

Date

[*] Delete as appropriate.