



## **CONTINENTAL SPORTS LIMITED TERMS AND CONDITIONS OF EQUIPMENT MAINTENANCE**

The following provisions are the Terms and Conditions ("Terms") that you agree to be bound by when you request Continental Sports Limited to carry out maintenance on equipment at your facility. The Customer's attention is in particular drawn to the provisions of condition 10.4.

### **1. INTERPRETATION**

1.1 In these Terms, unless the context otherwise requires:

"**Company**" means Continental Sports Limited (company registration number 830200) whose registered office is at Millgate Mills, Paddock, Huddersfield HD1 4SD

"**Contract**" means any contract between the Company and the Customer for the repair and maintenance of the Equipment, incorporating these conditions

"**Customer**" means the person, firm or company who requests a Service of its Equipment from the Company

"**Equipment**" means the equipment which the Customer has requested to be inspected and maintained by the Company

"**Location**" means the premises of the Customer where the Equipment is located, or any other location agreed between the Company and the Customer

"**Normal Working Hours**" means the hours of 8.00am to 5.00pm on any day other than Saturday or Sunday or a Bank or Public Holiday

"**Order**" means a request for the Service by the Customer

"**Representative**" or "**Representatives**" means the representatives of the Company attending the Location to carry out the Service

"**Service**" or "**Services**" means the repair and maintenance service in respect of the Equipment to be provided pursuant to these Terms

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it

1.3 Words in the singular include the plural and in the plural include the singular

1.4 A reference to one gender includes a reference to the other gender

1.5 Condition headings do not affect the interpretation of these conditions

### **2. APPLICATION OF TERMS**

2.1 Subject to any variation under condition 2.3, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any form or documentation requesting a Service which is created by the Customer)

2.2 No terms or conditions endorsed on, delivered with or contained in any form or document created by the Customer shall form part of the Contract simply as a result of such document being referred to in the Contract

2.3 These conditions apply to the Service and any variation to these conditions and any representations about the Service shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation

2.4 Each Order by the Customer shall be deemed to be an offer by the Customer to obtain Services subject to these conditions

2.5 No Order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the Order is issued by the Company

2.6 It shall be for the Customer to ensure that the Equipment to be serviced is listed in its Order and is complete and accurate

### **3. SERVICES TO BE PROVIDED**

3.1 The Company shall provide the Customer with a repair and maintenance service for the Equipment, such service being limited to the equipment which the Customer specifically requests to be inspected in its Order

3.2 Subject to the remainder of this clause and subject to clause 5, the Service shall consist of:

3.2.1 a visual inspection of the Equipment supplemented by basic non-invasive investigations and non-destructive testing (for example, but without limitation, visual inspection of welds rather than ultra-sonic testing

and stamp-testing of mats rather than removal of covers for the purpose of chemically testing foam composition);

3.2.2 such routine maintenance of the Equipment as the Company may reasonably determine to be necessary in order to keep the Equipment in good working order; and

3.2.3 the repair of any defect in or malfunction of the Equipment which is discovered by the Representatives during the course of routine maintenance checks or is reported to the Company by the Customer in advance of the maintenance visit

3.3 Routine maintenance of the Equipment shall be carried out by one or more Representatives who shall be suitably qualified and duly authorised to carry out the Service attending at the Location at a time during Normal Working Hours as may be agreed in advance between the Company and the Customer

3.4 If the Representatives discover a defect in or malfunction of the Equipment during the Service, the Representatives shall use all reasonable endeavours to repair it at the Location if it is, in the Representative's sole opinion, a modest or minor repair, but if that is not reasonably practicable or is not reasonably practicable in the time available during Normal Working Hours or such repairs are of a nature which are not minor or modest, the Representatives will seek to make suitable arrangements with the Customer for either:

3.4.1 a further visit to be made to the Location during Normal Working Hours for the repair of the defect or malfunction; or

3.4.2 if it is not reasonably practicable or possible for the defect or malfunction to be repaired at the Location, the removal of the Equipment (or, where practical, the part of the Equipment in question) for the purposes of repair at the Company's premises

and the Company shall provide the Customer with an indication of the cost of such repairs after the maintenance visit but prior to carrying out such repairs as may be necessary

3.5 At the conclusion of the Service, a Representative shall present to the Customer a written report which will state:

3.5.1 the work carried out during the Service and the state in which the Equipment has been left;

3.5.2 what major repairs are required on items which have been judged unsafe for use until repaired (pursuant to clause 6.1); and

3.5.3 whether any items have been condemned (pursuant to clause 6.2)

and the Customer will be asked to sign the report to confirm understanding of the work carried out and any works identified as being required

3.6 If the written report states that an item of equipment which has been manufactured or installed by a manufacturer or installer other than the Company is left in good or safe order then such statement is subject to the qualification stated in clause 4.2

#### **4. INSPECTION OF OTHER MANUFACTURERS' PRODUCTS**

4.1 Subject to the following provisions of this clause, if the Equipment contains an item of equipment which is manufactured by a manufacturer other than the Company, the Representatives will include such equipment in the Service

4.2 The Representatives will service such equipment to the best of their knowledge which excludes any product-specific knowledge which the manufacturer or installer of the item may consider as having relevance to the maintenance requirements of that item

4.3 As the Company was not the manufacturer of such equipment, the Company cannot comment on how it was made or whether it was, or remains, safely installed

4.4 If the Customer requires full servicing of equipment manufactured or installed by a manufacturer other than the Company, the Customer should consider contacting the manufacturer or installer of such equipment for such service

#### **5. SERVICES NOT INCLUDED**

5.1 The Company shall not carry out the Service in respect of:

5.1.1 any high level items of equipment (for example, but without limitation, roof-mounted apparatus), unless specifically requested to when the Customer places its Order as appropriate inspection apparatus would need to be brought, although the Representatives will endeavour to visually inspect such apparatus from ground level if the Customer so requests; or

5.1.2 any electrical or computer circuitry in any Equipment, although the Company can assist in the Customer arranging such an inspection separately

5.2 Unless specifically requested to do so, the Company shall not conduct any pull testing of any wall or floor fixings

#### **6. MAJOR REPAIRS AND THE RIGHT TO CONDEMN**

6.1 If a Representative determines that an item of Equipment is unsafe or sub-standard but capable of economic

repair, that item shall be brought to the Customer's attention by the Representative and the Customer shall immediately take that item out of service until satisfactorily repaired. The Company will provide an indication of the cost of any repair work required to such an item after the maintenance visit

6.2 Any item of Equipment that the Representatives identify as being unsafe and beyond economic repair will be indelibly marked with the word 'CONDEMNED' by the Representatives and must immediately be taken out of service by the Customer. By agreeing to these Terms, the Customer grants the Company and the Representatives the right to condemn Equipment that is unsafe and beyond economic repair by the method stated

6.3 The Company is unable to remove items which have been condemned pursuant to clause 6.2 and it is the Customer's responsibility to ensure the items are no longer used and are disposed of responsibly

## **7. SPARE PARTS AND REPLACEMENTS**

7.1 During the Service at the Location, the Company shall use all reasonable endeavours to supply minor spare parts and replacement components required to maintain the Equipment in good working order at an additional cost

## **8. CUSTOMER'S OBLIGATIONS**

8.1 As the Service is supplemental to the Customer's maintenance programme, the Customer shall:

8.1.1 at all times keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment;

8.1.2 use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in writing by the Company; and

8.1.3 ensure that its equipment is checked prior to each use by a suitably qualified person and that a suitably qualified person supervises the use of the equipment

8.2 It is the Customer's responsibility to ensure that its Order clearly states the Equipment to be serviced (and if there are any specific instructions to be followed) and failure to clearly state the equipment to be serviced may result in the Representatives exercising their judgement as to what is to be serviced and the written report will be conclusive evidence of the equipment that has been serviced and the Company will not accept any liability for any equipment which has not been serviced under such circumstances

8.3 In the event that the Representatives exercise their judgement pursuant to clause 8.2, the Customer shall be responsible for the costs incurred in servicing the equipment

8.4 The Customer shall, prior to the commencement of the Service, bring to the Company's or the Representatives' attention any potential or actual defects relating to the Equipment of which it is aware and the Customer shall, on the Representatives' arrival, highlight such problems to the Representatives

8.5 The Customer shall ensure that the Representatives are given full and free access to the Equipment

8.6 The Customer shall provide the Representatives with such information and records concerning the Equipment, its application, use, location and environment as the Representatives may reasonably request to enable them to carry out their duties

## **9. CHARGES AND PAYMENT**

9.1 Unless a fixed price has previously been agreed by the Company in writing, the Customer will be charged for the time spent by the Representatives in carrying out the Service at a rate per man hour spent (usually two Representatives will attend) in addition to a charge dependent on what area of the United Kingdom the Service is to be conducted in. Full details of the current labour and area charges and are available on request or on the Company's website

9.2 In addition to the charges set out at clause 9.1, there will be a charge for any and all spare parts and materials used by the Representatives during the Service

9.3 Unless otherwise agreed in writing with the Company, payment must be made in full within 30 days of the date of the invoice which shall be dispatched after the Service has been completed. Time for payment shall be of the essence.

9.4 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998, together with the reimbursement of all costs reasonably incurred in the recovery of such overdue sums

9.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off or counterclaim and no sums shall be deducted from the price payable unless any such discount has been separately agreed with the Company

9.6 Failure to pay any invoice in accordance with these Terms or with terms as may be agreed separately shall entitle the Company to suspend further services to the Customer of whatever nature without prejudice to any other right which the Company may have

## **10. LIABILITY**

10.1 This condition 10 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach of the Contract, any use made by the Customer of the Service and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract

10.3 Nothing in these Terms limits or excludes the liability of the Company:

10.3.1 for death or personal injury resulting from negligence; or

10.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company

10.4 Subject to conditions 10.2 and 10.3:

10.4.1 the Company shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of goods, loss of contract, loss of use or any special, indirect, consequential or pure economic loss, costs, damages, charges or expense; and

10.4.2 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services

10.5 As the equipment is inspected on the day on which the Service is carried out, the Company shall not be liable for any change or deterioration in the Equipment which occurs after the Service and the report prepared by the Representatives shall be conclusive evidence of the state of the Equipment at the time of the Service. It is the Customer's responsibility to continually monitor the state of its equipment and to arrange any repairs which may become necessary from time to time

10.6 The Company will make all reasonable efforts to attend the Location to undertake the Service at a specific time (if agreed by the Company in writing) but circumstances such as, for example, over-runs on prior jobs or traffic delays may result in the Representatives arriving after the agreed time. The Customer accepts that an agreed time can only be an estimate and that the Company will not be liable for any costs or losses resulting from a failure to attend at that agreed time

## **11. FORCE MAJEURE**

11.1 The Company shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control including, but without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of or a delay experienced on a transport network, act of God, war, civil commotion, malicious damage, compliance with any law or governmental order, regulation or direction, accident, breakdown of plant or machinery, flood, storm or default of suppliers or sub-contractors

## **12. DURATION AND TERMINATION**

12.1 Subject to condition 12.3, the Contract shall terminate automatically on completion of the Service or, if later, after any repairs are made pursuant to clause 6.1

12.2 Without prejudice to any other rights or remedies which the terminating party may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

12.2.1 notice is given at least 3 days prior to the date scheduled for the Service; or

12.2.2 either party (being an individual) has a bankruptcy order made against it or makes any arrangements with creditors, or otherwise takes the benefit of any provision for the relief of insolvent debtors, or (being a body corporate) convenes any meeting of creditors, or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, administrator or administrative receiver appointed of all or any part of its undertaking, or documents are filed with the court for the appointment of an administrator of the party or notice of intention to appoint an administrator is given by a party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of a party or for the granting of an administration order in respect of either party, or any proceedings are commenced relating to the insolvency or possible insolvency of either party or if the other party ceases, or threatens to cease, to trade

12.3 On termination of the Contract for any reason:

12.3.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied pursuant to the Contract but for which no invoice has yet been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and

12.3.2 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to

survive or implicitly surviving termination, shall not be affected

12.4 Any waiver by either party of a breach of any provision of these Terms shall not be considered as a waiver of any subsequent breach of the same or any other provision

12.5 The rights to terminate this Contract given by this clause 12 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

12.6 Upon the termination of this Contract for any reason, subject as otherwise provided in these Terms and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Contract

### **13. NATURE OF AGREEMENT**

13.1 Subject to the Customer's consent (which shall not be unreasonably withheld) the Company shall be entitled to carry out its obligations under this Contract through any agents or sub-contractors appointed by it in its absolute discretion for that purpose

13.2 This Contract contains the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements and understandings between the parties

13.3 If any provision or any part of a provision of the Contract is found by any court or other administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect

13.4 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts

### **14. NOTICES**

14.1 Any notice required to be given under this Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery, in case of communications to the Company, to its registered office or such changed address as shall be notified to the Customer by the Company or, in the case of communications to the Customer, to its registered office if it is a company or in any other case to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer

14.2 Any notice shall be deemed to have been duly received when left at the address referred to in this clause if delivered personally or on the second business day after posting if sent by pre-paid first-class post or recorded delivery

14.3 A notice required to be given under this Contract shall not be validly given if sent by e-mail