

# Terms & Conditions

## 1. DEFINITIONS

a. The "Contract" is the Contract between the Owner and the Hirer for the hire of Plant, which incorporates the Offer and is governed by these conditions.

b. The "Hire Period" shall commence from the time when the Plant leaves the Owner's depot or place where last employed and shall continue until the Plant is received back at the Owner's named depot or other agreed location. For the avoidance of doubt the Hire Period includes the time Plant is left on site during a Holiday Period.

c. The "Hirer" is the Company, firm, person, partnership, association or other body that the Owner's Plant on hire and includes their successors or personal representatives.

d. "Holiday Period" covers any cessation of work over Easter, Christmas and the New Year, as well as any other Bank or Public holidays.

e. "Owner" is the Company, firm, person, partnership, association or other body that the Plant to be hired, the Hire Period, relevant hire rates and charges and any supplementary conditions to be incorporated into the Contract.

f. The "Owner" is the Company, firm or person letting the Plant on hire and includes their successors or personal representatives.

g. "Plant" covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefore, which the Owner agrees to hire to the Hirer, or anything which the Hirer agrees to hire from the Owner to the Hirer, and anything supplied by the Owner for the safe operation and routine inspection and maintenance of the Plant.

h. A "Working Day" shall be from 8.00 am to 4.30 pm, Monday to Thursday, and 8.00 am to 3.30 pm, on Friday, allowing a half-hour lunch break each day, unless otherwise specified in the Contract.

i. A "Working Week" covers the period from 8.00 am on Monday to 3.30 pm on Friday, unless otherwise specified in the Contract.

## 2. EXTENT OF CONTRACT

No terms, conditions or warranties other than as specifically set forth in the Offer shall be deemed to be incorporated or form part of the Contract or otherwise govern the relationship between the Owner and the Hirer in relation to the hire of any particular Plant pursuant to the Offer. This excludes all other terms or conditions which the Hirer may seek to apply under any order or acknowledgement or acceptance of sales documentation and/or correspondence, representations or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by the Owner. The Owner and the Hirer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract, except that a person who is a successor to or an assignee of the rights of the Owner is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).

## 3. ACCEPTANCE OF PLANT

Acceptance of the Plant on site implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing.

**4. UNLOADING AND LOADING**

The Hirer shall be responsible for the unobstructed access and egress and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site; and any personnel supplied by the Owner for such unloading and / or loading shall be deemed to be under the direction and control of the Hirer. Such personnel for all purposes shall be deemed with their employer in the unloading and / or loading of the Plant to be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) who shall be solely responsible for all claims arising in connection with unloading and / or loading of the Plant by or with the assistance of, such personnel.

## 5. DELIVERY IN GOOD ORDER AND MAINTENANCE; INSPECTION REPORTS

a. Unless notification in writing to the contrary is received by the Owner from the Hirer in the case of Plant supplied with an operator within four working days, and in the case of Plant supplied with an operator within seven working days, of the Plant being delivered to the site, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with the terms of the Contract and to the Hirer's satisfaction, provided that where the Plant is supplied with an operator, the cost of such goods stated above shall be calculated from the date of completed erection of Plant. The Hirer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and / or the Owner's recommendations, and on return on the completion of the Hire Period in equal good order (fair wear and tear excepted).

b. The Hirer shall at all times when hiring Plant without the Owner's operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the Plant. If such Plant is found to be in a dangerous, unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising there from.

c. Any inspection report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner and accepted by the Hirer, and returned on completion of the Hire Period.

## 6. SERVICING AND INSPECTION

The Hirer shall at all reasonable times allow the Owner, his agents or his insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Hirer shall allow such access during the Working Day.

## 7. GROUND AND SITE CONDITIONS

a. The Hirer shall be deemed to have knowledge of the site or the property or land where the Plant is to be delivered and the Hirer warrants that the condition of the site or place of delivery of the Plant is suitable for the use of such Plant.

b. If, in the opinion of the Hirer, the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel on or be parked on, the Hirer shall be responsible for dismantling on without timbers or equivalent support, the Hirer shall supply and lay suitable timbers or equivalent support in a suitable position for the Plant to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.

c. Any timber or other material supplied by the Owner is provided solely to assist the Hirer under their duties within clause 7(b) and expressly not

to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the Plant.

d. The Owner is responsible for the protection of, and liable for any damage to any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the site and the Hirer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

## 8. HANDLING OF PLANT

a. **WHAT IS PROVIDED OR ANY PERSON IS SUPPLIED BY THE OWNER WITH THE PLANT.** The Owner shall supply a person competent in operating the Plant or for such purpose for which the person is supplied and such person shall be under the direction and control of the Owner. Such person or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) and the Hirer shall be solely responsible for all claims arising in connection with the hire of the Plant by the said driver / operators / persons.

b. The Hirer shall not allow any other person to operate such Plant without the Owner's prior written consent.

c. Such drivers or operators or persons shall not operate any other plant or machinery or undertake work other than that which they are supplied by the Owner unless previously agreed in writing between the Owner and the Hirer.

## 9. BREAKDOWN, REPAIRS AND ADJUSTMENT

a. Any breakdown or the unsatisfactory working or damage to any part of the Plant must be notified immediately to the Owner, and confirmed in writing. Any claim for breakdown time will only be accepted from the time and date at which written notification is received and acknowledged by the Owner.

b. Full allowance for the hire charges set out in the Offer will be made to the Hirer for any stoppage due to breakdown of the Plant caused by the notified fault or either an inherent fault or a fault not ascertainable by reasonable examination or failure to clean and test and for all stoppages for normal running repairs in accordance with the terms of the Contract.

c. The Hirer shall not (except for the changing of any tire and repair of punctures), repair, modify or alter the Plant without the prior written permission of the Owner. The Hirer shall be responsible for the cost of any hire charge for any repair of any tire and repair of punctures which are however the responsibility of the Hirer who should arrange for them to be changed / repaired. The Hirer is responsible for all costs incurred in the changing or replacement of any tire (which must be of an equivalent specification) as approved by the Owner and for the repair of any hire charge.

d. The Hirer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working or damage to any part of the Plant due to the Hirer's negligence, misdirection or misuse of the Plant, whether by the Hirer or by any other person or persons in the hire of the Plant or by the Hirer's driver or operator. Any hire charge for any breakdown time will only be accepted from the time and date at which the Plant is necessarily idle due to such breakdown, unsatisfactory working or damage. The Hirer is responsible for the cost of spares / or repairs due to theft, loss or vandalism of the Plant. The Owner will be responsible for the cost of any spares, inclusive of the cost of spares, to the Plant involved in breakdown from all other causes.

## 10. OTHER STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" (clause 9) or for "Idle Time" (clause 25), as herein provided), for stoppages through causes outside the Owner's control, including but not limited to bad weather and flooding. The Hirer shall be responsible for the cost of spares or / or repairs due to theft, loss or vandalism of the Plant. The Owner will be responsible for the cost of spares, inclusive of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Hirer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.

## 11. LOSS OF OTHER PLANT DUE TO HIRE CHARGES

Each item of Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowances for the working of such unit or units by any other unit or units of Plant working in conjunction therewith, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

## 12. LIMITATION OF LIABILITY

Except for liability on the part of the Owner which is expressly provided for in the Contract (including this clause), the Owner:

a. The Owner shall have no liability or responsibility for loss, damage or whatever nature due to or arising through any cause beyond his reasonable control;

b. The Owner shall have no liability or responsibility, whether by way of indemnity or otherwise, of any branch or part of the Contract, unless a statutory duty or misrepresentation or reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Hirer's loss of profit, loss of use of the Plant or any other asset, hire, loss of production or productivity, loss of contracts with third parties, or any other financial loss to any third party, and / or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and

c. whenever the Contract (including these clauses) provides that any allowance is to be made, for the Hirer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made.

d. For the avoidance of doubt, nothing in these conditions limits or seeks to exclude the Owner's liability for claims of death or personal injury caused by the Owner's negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

## 13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

a. For the avoidance of doubt it is hereby declared and agreed that nothing in this clause affects the operation of clauses 4, 5, 8 and 9 of these conditions.

b. For the duration of the Hire Period (which for the avoidance of doubt includes the time Plant is left on site during a Holiday Period) the Hirer shall, subject to the provisions referred to in sub

paragraph (a) make good to the Owner all loss or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in clause 9 herein, and shall also fully indemnify the Owner and any personnel supplied by the Owner in respect of all claims by any person

whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or delivery of any plant or equipment of the Hirer Period, and in connection therewith, whether arising under statute or common law. In the event of loss or damage to the Plant, hire charges shall be continued at idle time rates as defined in clause 25 until the settlement has been agreed. Payment of the settlement may be made in 21 days of the date of the date of the agreement or idle time charge can be reinstated from the date of that agreement.

Should idle time charge be re-instated, the agreed settlement figure remains payable in full. Notwithstanding the above the Hirer shall not be responsible for damage to person or property caused by or in connection with the Plant or the Hirer or the site or the public expense, prior to its leaving such highway where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner,

ii. during the erection and / or dismantling of any Plant which such Plant requires to be completely demolished, the Hirer shall be responsible for all hire charge for such erection and / or dismantling that such erection / dismantling is under the exclusive control of the Owner or his agents;

iii. after the Plant has been removed from the site and is in transit on a highway maintainable at the public expense (or where the site is not immediately accessible to the public) and is unreasonably occupied in transporting the Plant, a hire charge at idle time rates shall be payable for extra time, provided that where Plant is hired for a total period of less than one Working Week, the full hire rate shall be paid from the date of despatch to the date of return to the Owner, including the time of collection and delivery.

iv. If the Plant is not made available for collection as agreed between the parties, such Plant shall be deemed with immediate effect to be placed back on hire. The Hirer shall be responsible for the safekeeping of the Plant in accordance with clause 13, and for all the reasonable costs and expenses incurred by the Owner in seeking to collect such Plant.

c. Upon the completion of the Hire Period, the Hirer shall clean and where necessary, decontaminate the Plant. All fuel and contaminants will be removed from tanks, storage tanks and containers. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner should the Hirer fail to comply with this clause.

## 24. HIRER'S LIABILITY DURING THE NOTICE OF TERMINATION OF CONTRACTS

a. Where the Hire Period is indeterminate or having been defined becomes indeterminate the Contract shall be terminable by seven days notice in writing given by either party to the other except in cases where the Plant has been let or hired out with the Hirer's consent, the Owner may agree to accept less than 7 days notice of termination, the Hirer's obligations under clause 13 shall continue until the Plant is returned to the Owner in accordance with clause 31 or until the Owner has collected the Plant within 7 days following the acceptance of such notice. Oral notice given by the Hirer to the Owner's driver or operator shall not be deemed to constitute compliance with the provisions of this clause.

## 15. RE-HIRING ETC.

Notwithstanding the Plant nor any part thereof shall be re-hired, sub-let, or lent to any third party without the prior written permission of the Owner.

b. **CHANGE OF SITE**

The Plant shall not be moved from the site to which it was delivered or consigned without the prior written permission of the Owner.

## 16. RETURN OF PLANT FOR REPAIRS

If during the Hire Period the Owner decides that urgent repairs to the Plant are necessary then the hire period will be extended to the time required to effect the repair, and the Hirer shall be responsible for the cost of spares / or repairs due to theft, loss or vandalism of the Plant. The Owner will be responsible for the cost of spares, inclusive of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Hirer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.

## 17. BASIS OF CHARGING

The Hirer shall be charged to the Owner for each Working Week an accurate statement of the number of hours the Plant has worked each day. When any personnel, operator or driver is supplied by the Owner, the Hirer shall sign their time record sheets. The signature of the Hirer's representative shall be given to the Hirer to accept the time record sheets.

b. Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of driver or operator supplied by the Owner except where breakdown is due to acts or omissions of third parties and / or the Hirer's misuse, misdirection or negligence.

c. Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.

d. Plant shall be hired out either:

i. for a stated number of hours or a period of time;

ii. without any qualification as to minimum hours.

Odd days at the beginning and at the end of the Hire Period shall be charged pro rata.

iii. Stopped due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one day.

iv. For the hire of Plant which is required to be charged as working time for a period of 24 hours.

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