

MODEL CONDITIONS FOR THE HIRING OF PLANT (With effect from July 2011)

These conditions are not to be used for consumer contracts.

A consumer contract is a contract entered into with a person acting in their own capacity and not for or on behalf of any business or trade entity.

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, Corporation or public authority taking 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) "Offer" is the Owner's offer to hire the Plant to the Hirer which will include details of 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, assignees or personal representatives.
- (g) "Plant" covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefor, which the Owner agrees to hire to the Hirer, or anything which is supplied by the Owner to effect the hire, 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 to form part of the Contract or shall 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 or similar document and supersedes all prior negotiations, 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 shall for all purposes in connection with their employment in the unloading and / or loading of the Plant 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 without an operator within three 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 terms of the Contract and to the Hirer's satisfaction, provided that where the Plant requires to be erected on site, the periods 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 its 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 continued at work or in use in an 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 therefrom.

- (c) Any inspection report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner, if requested 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 is 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 over, be transported over, be erected or dismantled 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 Hirer 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) When a driver or operator 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 Hirer. Such drivers or operators 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 operation of the Plant by the said drivers / 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 for 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 of 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 considered 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 development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear 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 tyre and repair of punctures), repair, modify or alter the Plant without the prior written permission of the Owner. The changing of any tyre and repair of punctures 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 tyre (which must be of an equivalent specification) as approved by the Owner and for the repair of any puncture.
- (d) The Hirer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of 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 his servants, and for the payment of hire at the idle time rate as defined in clause 25, during the period the Plant is necessarily idle due to such breakdown, unsatisfactory working or damage. The Hirer is responsible for the cost of spares and / or repairs due to theft, loss or vandalism of the Plant. The Owner will be responsible for the cost of repairs, 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 / or ground conditions nor shall the Owner be responsible for the cost or expense 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 BREAKDOWN

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 allowance for the loss of working time 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 these clauses):

- (a) the Owner shall have no liability or responsibility for any loss, or damage of 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 by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by 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 or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature 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 against hire charges, such allowance shall be 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 of 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 and completely 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 use of the Plant during the continuance of the Hire Period, and in connection therewith, whether arising under statute or common law. In the event of loss of 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 must be made within 21 calendar days of the date of the agreement or idle time charges can be reinstated from the date of that agreement. Should idle time charges be re-instated, the agreed settlement figure remains payable in full.
- (c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury:
 - (i) prior to delivery of any Plant to the site (or, where the site is not immediately adjacent to a highway maintainable at 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 where such Plant requires to be completely erected / dismantled on site, provided always that such erection / dismantling is under the exclusive control of the Owner or his agent,
 - (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 adjacent to a highway maintainable at the public expense after it has joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner,
 - (iv) where the Plant is travelling to or from a site on a highway maintainable at the public expense (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner.

14. NOTICE OF ACCIDENTS

If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Hirer to the Owner by telephone and confirmed in writing to the Owner no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Hirer is not bound to fully indemnify the Owner, no admission of liability, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's prior written permission.

15. RE-HIRING ETC.

Neither 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.

16. 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.

17. RETURN OF PLANT FOR REPAIRS

If during the Hire Period the Owner decides that urgent repairs to the Plant are necessary then he may arrange for such repairs to be carried out on site or at any location of his nomination. In the event that urgent repairs to the Plant are necessary the Owner shall be obliged to replace the Plant with similar Plant if available, the

Owner (but without prejudice to any of the provisions of clauses 9 and / or 13) paying all transport charges involved. In the event of the Owner being unable to replace the Plant he shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of clauses 9 and / or 13) by giving written notice to the Hirer. If such termination occurs:

- (a) within three months from the commencement of the Hire Period, the Owner (but without prejudice to any of the provisions of clauses 9 and / or 13) shall pay all transport charges involved, or,
- (b) more than three months from the commencement of the Hire Period, the Owner (but without prejudice to any of the provisions of clauses 9 and / or 13) shall be liable only for the cost of reloading and return transport.

18. BASIS OF CHARGING

- (a) The Hirer shall render 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 bind the Hirer to accept the hours shown on the time records 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, subject however to the provisions of clause 8 of these conditions.
- (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 minimum number of hours per Working Day or per Working Week or,
 - (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.
- (e) Stoppages 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 stoppage and any excess will be charged for at the appropriate idle time rates.
- (f) In the case of Plant which is required to be dismantled for the purpose of transportation, if the Owner agrees to a modification of the hire charge for the period required for assembling on site and dismantling upon completion of the Hire Period, such modification of the hire charge and the Hire Period for which it shall apply shall be stated in the Offer / Contract.

19. PLANT HIRED ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS

The full daily rate will be charged on a daily basis irrespective of the hours worked except in the case of breakdown for which the Owner is responsible, when the actual hours worked will be charged pro rata of the average Working Day. No hire charge shall be made for Saturday and / or Sunday unless the Plant is actually worked.

20. PLANT HIRED BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS

The weekly or monthly rate shall be charged irrespective of the number of hours worked, except in the case of breakdown for which the Owner is responsible when an allowance pro rata of the agreed weekly rate or pro rata of the agreed monthly rate will be made for each full Working Day broken down calculated to the nearest half Working Day.

21. PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 39 HOURS PER WEEK

The full hire for the minimum period in the Contract will be charged and an additional pro rata charge will be made for hours worked in excess of such minimum period. Allowance will be made for breakdowns up to 8 hours except on Fridays when the allowance will be up to 7 hours providing always that where the actual hours worked are in excess of the minimum period less breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. The minimum Working Week of 39 hours shall be reduced by 8 hours Monday to Thursday and 7 hours Friday for each Holiday Period occurring in such Working Week, provided that the Plant is not in use during such Holiday Period.

22. "ALL-IN" RATES

Where "All-In" rates are charged by agreement the minimum period shall be as defined in the Contract and in accordance with the hire rates and terms contained therein, subject to the provisions of clause 26.

23. COMMENCEMENT AND TERMINATION OF CONTRACT (TRANSPORT OF PLANT)

- (a) 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 but an allowance shall be made of not more than one day's hire charge each way for travelling time. If the Plant is used on the day of travelling, full hire rates shall be paid for the period of use on that day. If more than one day is properly and unavoidably occupied in transporting the Plant, a hire charge at idle time rates shall be payable for such 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's named depot or other agreed location.
- (b) 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 bunds, storage tanks and bowsers. 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 CONTRACT

- 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 lost or damaged. Notwithstanding that the Owner may have agreed 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 the 7 days following the acceptance of short 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.
- b) Without prejudice to clause 24(a), should the Hirer fail to make the Plant available for collection by the Owner before the end of the 7 day notice, the Hirer's obligations under clause 13 shall continue for a further 3 days or until such time as the Plant is made available for collection and the Owner has collected the Plant. For the avoidance of doubt, where the Hirer gives a notice pursuant to clause 24(a) but subsequently and with the consent of the Owner, withdraws such notice, the obligations of clause 13 shall continue to apply and the requirements of clause 24 will apply to any later termination of the Contract.
- c) If the Hirer terminates the Contract before the Hire Period commences, then the Hirer is liable for all reasonable costs and charges incurred by the Owner to which the Owner is committed at the time of termination.

25. IDLE TIME

When the Plant is prevented from working for a complete Working Week, the hire charges shall be two thirds of the hire rate or such other idle time rate as is agreed in writing by the Owner for the period during which the Plant is not in use. If the Plant works for any time during the Working Day then the whole of that Working Day shall be charged as working time. In any case no period less than one Working Day shall be reckoned as idle time save for as provided for in clause 18(e). Where an "All-In" rate is charged, idle time is calculated on the machine element only. Full rate will be charged for the operator.

26. WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT

All chargeable items shall be paid by the Hirer at the rates set out in the Contract save that any subsequent increases before and / or during the Hire Period arising from awards under any wage agreements and / or from increases in the Owner's statutory contribution shall be charged as additions at cost by the Owner and shall be admitted and paid by the Hirer.

27. TRAVELLING TIME AND FARES

Travelling time, fares and similar expenses for drivers, operators and any person supplied by the Owner, incurred at the beginning and end of the Hire Period and where appropriate return fare of the driver, operator and any person supplied by the Owner to his home will be chargeable at cost. No charge shall be made by the Owner for any such expenses incurred by other employees of the Owner for the purpose of servicing, repair or maintenance of Plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the Plant.

28. FUEL, OIL AND GREASE

Fuel, oil and grease shall, when supplied by the Owner, be charged at net cost or an agreed estimate of net cost, and when supplied by the Hirer, shall be of a grade or type specified by the Owner. The Hirer shall be solely responsible for all damages, losses, costs and expenses incurred by the Owner if the Hirer uses the wrong fuel, oil or grease.

29. SHARPENING OF DRILLS/STEELS ETC.

The cost of re-sharpening or replacement of drill bits, blades and other ancillary items shall be borne by the Hirer.

30. OWNER'S NAME PLATES

The Hirer shall not remove, deface or cover up the Owner's name plate or mark on the Plant indicating that it is his property, without the prior written permission of the Owner.

31. TRANSPORT

The Hirer shall pay the cost of and if required by the Owner, arrange transport of, the Plant from the Owner's depot or other agreed location to the site and return to the Owner's named depot or other agreed location on completion of the Hire Period.

32. GOVERNMENT REGULATIONS

- a) The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work, etc. Act and observance of the Road Traffic Acts should they apply, including the cost of road fund licences and any insurances made necessary thereby, save that if and during such time as the Plant is travelling, whether for full or part journey from Owner to site and site to Owner under its own power with a driver supplied by the Owner, the Owner and not the Hirer shall be responsible as aforesaid.
- b) The Hirer shall indemnify the Owner against any charges or fines that the Owner may become liable for as a result of the operation of the Plant during the Hire Period.

33. PROTECTION OF OWNER'S RIGHTS

- (a) The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant except as provided under clause 15 and shall protect the same against distress, execution or seizure and shall indemnify the

Owner against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition.

- (b) The Owner may terminate the Contract forthwith by written notice to the Hirer if one or more of the following events occur:
 - (i) The Hirer defaults in punctual payment of any sum due to the Owner for hire of Plant or other charges payable pursuant to these conditions;
 - (ii) The Hirer fails to observe and perform the terms and conditions of the Contract;
 - (iii) The Hirer suffers, or the Owner reasonably believes that the Hirer shall suffer, any distress or execution to be levied against him;
 - (iv) The Hirer makes or proposes to make any arrangement with his creditors or becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force; or
 - (v) The Hirer does or causes to be done or permit or suffer any act or thing whereby the Owner's rights in the Plant may be prejudiced or put into jeopardy.
- (c) In the event of termination under sub-paragraph (b) above:
 - (i) The Hirer must give the Owner or his agents, immediate unobstructed access to recover the Plant.
 - (ii) The Owner shall be entitled to claim the hire charges outstanding as at the date of termination of the hire under this clause and return transport charges under clause 31.
- (d) The rights under sub-paragraph (b) and (c) above:
 - (i) May be exercised notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature.
 - (ii) Shall not affect the Owner's right to claim damages for breach of Contract or recover any sums due under the Contract as a debt.
- (e) If the Hirer does not make payment of a sum by the final date on which payment is due to be made, the Owner has the right to suspend performance of its obligations under the Contract. The right to suspend may not be exercised without first giving to the Hirer at least 7 days notice in writing of the Owner's intention to suspend performance, stating the ground or grounds on which the Owner intends to suspend performance. The right to suspend performance will cease when the Hirer makes payment in full of the amount due.

34. CHANGES IN NORMAL WORKING WEEK

The foregoing provisions have been framed upon the basis of the Hirer working a 5-day week of 39 hours; it is hereby agreed that in the event of:

- (a) there being any agreed change in the normal weekly hours in the industry in which the Hirer is engaged or,
- (b) the Contract being made with reference to a 5 day week of other than 39 hours. Clauses 1(h) and (i), 18(c) and (d), 20 and (in regard to breakdown allowance and reduction for statutory holidays) 21 shall be deemed to be modified conformably and in the event of an alteration in the normal weekly working hours in the said industry the "Hire Rates and Terms" of Plant hired for a minimum weekly or daily period shall be varied pro rata.

35. DISPUTE RESOLUTION

- (a) If the site is situated within the United Kingdom, then the court whose jurisdiction covers the site will have exclusive jurisdiction and interpretation of the law for this Contract. If the original site is not situated within the United Kingdom, then the relevant jurisdiction and interpretation of the law of the Contract will be governed by the country where the Owner's head office is located.
- (b) Both parties to the Contract have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or any amendment or re-enactment thereof for the time being in force) will apply. The person (if any) specified in the Contract to act as adjudicator may be named in the Offer. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being.
- (c) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement (and / or, under Scots law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement or deduction. Where, under Scots law, the Owner, the Hirer, or the adjudicator, wishes to register a decision of the adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.

36. LATE PAYMENTS

The Owner reserves the right to charge the Hirer for the late payment of any outstanding invoices under the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent legislation.

37. SEVERABILITY

If any of these clauses are held to be unlawful, void or unenforceable, then that clause will be deemed severable and will not affect the validity and enforceability of the remaining clauses, to the extent permitted by law.

11.2 The Hire Charges will be charged and based on the length of time for which you require the Plant and Equipment and the Operator. If you agreed to take the Plant and Equipment for a minimum or a fixed period, you must pay the Hire Charges applicable for the whole of the minimum or the fixed period.

11.3 You do not continue to pay Hire Charges during stoppages which we could have avoided (such as breakdowns in the Plant and Equipment). Neither do you continue to pay Hire Charges during our Operator's lunch break (if taken).

11.4 Stoppages which are not due to a fault on our part, or on the part of our operator, will be charged for. (E.g. stoppages caused by inclement weather, unforeseen problems with the Site or access, punctures or usual running maintenance such as re-fuelling or re-fitting accessories).

11.5 You can ask our Operator to stop work at any time. If you do so, you will be responsible for the Hire Charges up to the point at which your request is made including the daily rate for the day on which work ceases, or the agreed minimum or fixed period.

11.6 We may ask you for payment of all or part of the Hire Charges in advance. If you give us more than 72 hours' notice that you wish to cancel the hire then we will repay the whole of any such advance payment. If you give us less than 72 hours' notice that you wish to cancel the hire, then we will repay 50% of the advance payment (unless we are able to re-hire the Plant and Equipment in which case we will repay the whole of the advance payments). We will repay the whole of the advance payment if hire of the Plant and Equipment does not proceed due to a fault on our part.

11.7 During the period of hire, from time to time, you will be asked to sign a time sheet confirming that it is an accurate record of the Operator's chargeable hours. You should check the time sheet carefully and only sign it if you agree with the information set out.

11.8 Hire charges are due at the beginning and/or at the end of the hire. We will let you know when you must pay the Hire Charges at the time you hire the Plant and Equipment.

11.9 You will pay the Hire Charges in full and upon the due dates, and time of payment is of the essence.

11.10 If any payment due under this Agreement is not paid in full and on the due date, interest will be charged from the due date to the date of payment at the base rate of the Bank of England plus 8% per annum.

12 CRANE CONTRACT LIFTS

If the Plant and Equipment includes a crane, the crane will be provided and operated in accordance with the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) and the British Standard Code of Practice for the Safe Use of Cranes (BS 7121). We will supply a competent crane supervisor who will be responsible for organising the lifting operation as planned by our Appointed Person, selecting suitable lifting tackle and ensuring that the work can be undertaken safely. Our crane supervisor will have authority to stop the operation whenever he considers it would be dangerous to continue and you agree to him having overall control of the lifting operation.

13 NOTIFICATION OF ACCIDENTS

You must notify us immediately if there is any accident involving the Plant and Equipment which results in damage to the Plant and Equipment or to other property or injury to or the death of any person.

14 TERMINATION OF HIRE

14.1 You can bring this Agreement to an end at any time by notifying our Operator or us that you wish to do so and by paying the Outstanding Balance.

14.2 If you breach any term of this Agreement, we may terminate this Agreement and require the immediate return of the Plant and Equipment to us. You undertake to return the Plant and Equipment to us upon termination of this Agreement. We will not ask you to return the Plant and Equipment before the end of the minimum or fixed period unless you are in default.

15 UNAUTHORISED RE-HIRING OF EQUIPMENT

You must not re-hire, sub-let or lend any of the Plant and Equipment to any third party or otherwise part with possession of the Plant and Equipment.

16 ACCESS BY US FOR SERVICING AND INSPECTION AND RECOVERY OF PLANT AND EQUIPMENT

You undertake that you will allow us to have access to your premises at any reasonable time to enable us to inspect, test, adjust, repair or replace the Plant and Equipment as necessary while it is in your possession or to recover the Plant and Equipment.

17 NAMEPLATES

You must not remove, deface or cover up any nameplate or identification mark or number on the Plant and Equipment, nor put any mark on the Plant and Equipment, which might indicate or suggest that the Plant and Equipment belongs to you.

18 GENERAL

18.1 If any provision of this Agreement is held to be unlawful, void or unenforceable then that provision will be deemed severable and will not affect the validity and enforceability of the remaining provisions, to the extent permitted by law.

18.2 Notices from you to us should be sent to us at our principal office address. Notices from us to you will be sent to the address provided to us by you or to any other address which you have notified to us in writing. You will notify us immediately in writing of any change to your address.

18.3 This Agreement incorporates all of the terms agreed between you and us. It cannot be varied except by a document signed by you and us on or after the date of this Agreement.

18.4 A party who is not a party to this Agreement shall have no right to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

18.5 If any amount is payable to you by us under this Agreement, we may withhold from those monies an amount equal to the total monies you owe us under this Agreement.

18.6 If the Site is situated within the United Kingdom, then the court whose jurisdiction covers the Site will have exclusive jurisdiction and interpretation of the law for this Contract. If the original Site is not situated within the United Kingdom, then the relevant jurisdiction and interpretation of the law of the Contract will be governed by the country where our head office is located.



2011 Hire Contract Terms and Conditions for Consumers for **Plant and Equipment Supplied with an Operator**

Important note to Owners and Hirers of Plant and Equipment:

These CPA Hire Contract Terms for Consumers are intended to apply to the hiring of Plant and Equipment supplied with an operator to individual consumers not acting in the course of any business. All these terms have been drawn up by the CPA and are recommended to CPA members and consumers as a comprehensive, fair and properly integrated set of hire terms appropriate for this type of equipment. Both the Owner and the Hirer must ensure that they are fully covered by insurance against the risks involved in the hire of the Plant and Equipment under these Terms and Conditions.

CPA, 27/28 Newbury Street, Barbican, London EC1A 7HU.

Tel: 020 7796 3366. Fax: 020 7796 3399.

Email: enquiries@cpa.uk.net

Website: www.cpa.uk.net

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1 DEFINITIONS

In this Hire Agreement (the "Agreement"),

1.1 "Hire Charges" means all the charges, operator costs, Waiver Fee and other fees (as applicable) charged to you by us in respect of the hire of the Plant and Equipment.

1.2 "Operator" means the operator provided by us to you with the Plant and Equipment to operate the Plant and Equipment.

1.3 "Outstanding Balance" means all amounts payable under this Agreement less the amount paid.

1.4 "Plant and Equipment" means the plant and equipment hired to you by us, including any substitutions, replacements and additions made in accordance with the terms of this Agreement and any manuals, accessories or other items supplied with the Plant and Equipment.

1.5 "Site" means the location where the Plant and Equipment is intended to be used.

1.6 "Waiver Fee" means the fee to be paid by you in accordance with clause 5.2, if applicable.

1.7 "we", "us", "our" means the owner of the Plant and Equipment, its successors, its employees and agents, and any business or other person to whom the owner transfers (by absolute assignment, by way of novation or by way of security) any or all of its rights or its rights and responsibilities (whether legal or equitable) under the Agreement.

1.8 "you", "your" means the hirer (or hirers) of the Plant and Equipment.

2 MAXIMUM PERIOD OF HIRE

The term of this Agreement will not exceed three calendar months.

3 NON-BUSINESS HIRE

The Plant and Equipment is hired to you on the basis that it is used only for private or non-commercial use. You must not use the Plant and Equipment for commercial purposes.

4 LIABILITY

4.1 If either you or we are in breach of any term of this Agreement, neither of us will be responsible for any losses that the other suffers as a result except those losses, which are a foreseeable consequence of the breach.

4.2 You have agreed to hire the Plant and Equipment for domestic and non-commercial purposes only. In the circumstances, if we are in breach of this Agreement we will not be liable to you for any claim relating to business expenses or losses, including but not limited to claims for loss of profit.

4.3 If a third party makes a claim against us in relation to any loss or damage caused by the Plant and Equipment as a result of your breach of any term of this Agreement, you will indemnify us in full for all costs and/or losses suffered by us as result thereof including but not limited to payment of compensation (including interest where applicable) to the third party, our reasonable legal and other fees incurred as a result of any legal action resulting from the claim. You will not be responsible for such a claim to the extent that the loss or damage results from our negligence or breach of contract.

4.4 Subject to clause 4.6, our liability is limited as follows:

4.4.1 Our liability for loss, destruction or damage to goods or property (other than goods being lifted by crane which is covered in 4.4.2 below) is limited to a total of £5 million whether due to our breach of contract or negligence; and,

4.4.2 If you are undertaking a lifting operation our liability for loss, destruction or damage to the goods being lifted is limited to a total of £25,000 whether due to our breach of contract or negligence.

We are not able to accept liability above these figures, notwithstanding that the Plant and Equipment will be operated by our Operator.

4.5 If you think that there is a possibility that goods or property could be damaged which have a value of more than these limits, then you must notify us in writing before the Plant and Equipment is delivered to the Site. On receipt of such notification, we may choose to make additional coverage available and this will involve an increase in the Hire Charges.

You will not be able to claim more than the amounts set out in clause 4.4 if:

4.5.1 you do not notify us that the damage could exceed the above limits;

4.5.2 we choose not to have additional coverage made available;

4.5.3 you do not agree to meet the extra charge for additional coverage; or

4.5.4 the additional coverage fails for some reason that is not our fault.

This will be so, even where we are at fault, except where your claim is for death or personal injury, as mentioned in paragraph 4.6 below.

4.6 The limits set out in paragraph 4.4 do not apply to claims for death or personal injury caused by our negligence. There is no limit on the amount of our liability for such claims.

5 LOSS, THEFT OF, OR DAMAGE TO THE PLANT AND EQUIPMENT

5.1 Subject to clauses 5.3 and 5.4 below, if the Plant and Equipment is lost, damaged, stolen or destroyed whilst in your care when our Operator is not present, or as a result of your failure to ensure that the Site is safe, you will be liable for the full cost of repairing or replacing the Plant and Equipment.

5.2 We may take out insurance to cover the risk to our Plant and Equipment in respect of events set out in clause 5.1. If we do so and you pay the Waiver Fee, we will not pursue you for the costs of repairing or replacing the Plant and Equipment but only to the extent that such costs are reimbursed to us by our insurers. You will still be liable to us, however, to the extent that the insurers do not reimburse us for the loss or damage. You must take reasonable care of the Plant and Equipment whilst it is in your custody, even if the Waiver Fee has been paid.

5.3 You will not be liable to pay us for any damage caused to the Plant and Equipment arising from defects in the Plant and Equipment which were not apparent when it was hired to you or which occur while the Plant and Machinery is being operated by our Operator, unless such damage arises as a result of the Site being unsafe and/or your negligence.

5.4 You will not be liable for any loss or theft of the equipment resulting from a fault in the Plant and Equipment's security system which occurred before the Plant and Equipment was delivered to the Site or occurs while the Plant and Machinery is being operated by our Operator, unless the fault in the Plant and Equipment's security system was caused by damage arising as a result of the Site being unsafe and/or your negligence. You must notify us immediately either via the Operator, or, if he is not present, to us at our principal office address if you notice a fault with the Plant and Equipment's security system, including but not limited to faulty locks or other security devices. You must not repair any faults without our prior written consent.

5.5 Where the Plant and Equipment, or any part of it, is lost, stolen, damaged or destroyed you must notify us immediately either via the Operator, or, if he is not present, to us at our principal office address, as a matter of urgency, in order that we can notify our insurers. If the insurers refuse to pay us because of a delay in notification by you, you will be liable to us for what would have been recovered from the insurers if you had complied with this clause. You must provide our insurers and us with all reasonable assistance when so requested.

5.6 You must notify the police immediately if the Plant and Equipment, or any part of it, is stolen, or has been criminally damaged.

6 DAMAGE TO SITE AND/OR ACCESS

6.1 You acknowledge that the Plant and Equipment you have chosen to hire may cause superficial damage to the ground, particularly in wet weather (for example, ruts may be created or paving stones may be cracked). You further acknowledge that the Plant and Equipment may also cause damage to underground services such as drains and sewers. Our delivery driver and/or operator will do their best to limit any such damage, but we cannot be held responsible for any damage of this sort. You are responsible for making good any damage caused to your property or adjoining land in obtaining access.

6.2 If you are particularly concerned to avoid superficial damage to the ground you must let us know as soon as possible. We may be able to provide extra protection, although there will be an additional cost in doing so, which we will pass on to you.

7 SITE AND ACCESS

7.1 While we do not expect you to have any technical knowledge of the Plant and Equipment you are hiring, it is your obligation to inform us of any visible access or Site restrictions, which you think may cause difficulty. For example, restricted access, limited working space, or overhead obstructions.

7.2 We may carry out a Site inspection; if we do we will check both the means of access and the place(s) where you require the work to be carried out. It is your responsibility to undertake any Site preparation that we ask (for example, removing any goods or materials that might hinder the job). We shall not be responsible for lost work time if the Operator is unable to commence or continue work as a result of your failure to complete Site preparation as requested by us.

7.3 You must immediately notify us of any change in Site conditions prior to the hire which might affect the safe use of the Plant and Equipment.

7.4 Whether or not we carry out an inspection, we may need to ask you for information about such things as the location of cesspits, drains and sewers. You must make every effort to ensure that the information you give us is accurate.

7.5 Where access is required over land you do not own, you undertake that you will obtain consent from the respective owners and to pay any charges they may make.

7.6 The Plant and Equipment must only be used at the Site. If you want to use the Plant

and Equipment at any other place you must first get from us written confirmation that we allow you to do so.

8 DELIVERY AND COLLECTION

8.1 Unless agreed otherwise, we will deliver the Plant and Equipment to the Site and collect it from the Site. The cost of delivery and collection will be notified to you prior to the period of hire.

8.2 We will give you an estimated time for the arrival of the Plant and Equipment on Site. We will make best endeavours to arrive promptly, but we cannot guarantee the arrival time. You should let us know in writing if there is a particular reason why timing is important.

8.3 If it is agreed that you will return the Plant and Equipment rather than us collecting it, you must return the Plant and Equipment to us in the same condition as when we supplied it to you although you will not be responsible for reasonable wear and tear which may occur during the period of hire.

8.4 Whether you return or we collect the Plant and Equipment, the Plant and Equipment must be cleaned before it is returned to us. If you have not made a reasonable attempt to clean it, you will be responsible for our reasonable costs for cleaning and restoration of the Plant and Equipment to enable it to be hired to someone else in a fit and proper condition.

9 PLANT AND EQUIPMENT AND THE OPERATOR

9.1 It is your responsibility to give the Operator of the Plant and Equipment clear instructions regarding the job you wish to be undertaken. You must provide any further information or explanation the Operator asks you for.

9.2 We will ensure that the Operator is competent and qualified to operate the Plant and Equipment.

9.3 We will ensure that the Plant and Equipment hired by you is in good working order and is fit for the purpose for which it is normally used.

9.4 The Operator's responsibility is generally limited to operating the Plant and Equipment competently and safely to complete the job that you have instructed him to undertake.

9.5 The Operator will use his best endeavours to complete the job you instruct him to undertake as expeditiously as possible.

9.6 If you need a 'lifting operation' special legal requirements must be met. Such work will normally be carried out as a 'Contract Lift' and the price will include the cost of the Appointed Person, who will have planned a safe method of carrying out the work, and the provision of a supervisor to control the actual lifting operation on site. If the Plant and Equipment includes a crane, the conditions set out in paragraph 12 below will apply.

10 SAFETY

10.1 You must not operate the Plant and Equipment yourself.

10.2 You will be responsible for the safe operation of the Plant and Equipment by our Operator.

10.3 You must follow any safety instructions given by our Operator. You must also take your own sensible safety precautions (for example, you must take all reasonable measures to prevent children from playing on or near the equipment at any time, particularly when the equipment is parked up for the night and our Operator is not able to oversee it).

10.4 Whilst we will be responsible for the safe operation of the Plant and Equipment, you must ensure that the Site itself is safe and secure.

11 PAYMENT

11.1 The Plant and Equipment can be hired by the day, for the weekend, by the working week, by the week or by the month. If you do not return the Plant and Equipment to us by the times set out below then we will be entitled to charge you for an additional day's (or days') hire.

The latest times, by which the Plant and Equipment must be returned, unless we are collecting it, are as follows:

Plant and Equipment hired for a day	Must be returned within 24 hours
Plant and Equipment hired for a weekend	Must be returned by 8.30 am on Monday
Plant and Equipment hired for a working week (Monday - Friday)	Must be returned by 3.30pm on Friday
Plant and Equipment hired for a week	Must be returned by 3.30 pm on the seventh consecutive day (so if you hire it on Wednesday it must be returned by 3.30pm Tuesday)
Plant and Equipment hired for a month	Must be returned by 3.30 pm on the last day of the calendar month (so if you hire it on the 15th of the month you must return it by 3.30 pm on 14th of the next month)