

MODEL CONDITIONS FOR THE HIRING OF PLANT (With effect from October 2021)

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 when either 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 any time the Plant is being transported to or from site; or is left on site during evenings, nights, weekends, or any 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, welfare units, accommodation, vehicles, or equipment therefor, which the Owner agrees to hire to the Hirer including any personnel, 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 or any personnel supplied by the Owner 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 to the site, and where applicable any access road to the site and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site or on the access road; 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 written notification is received by the Owner within 24 hours from the commencement of the Hire from the Hirer, 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 themselves 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, the Owner's agents, or insurers to have access to the Plant to inspect, test, adjust, repair, or replace the same. The Hirer shall allow such access during the Working Day. The Owner reserves the right

to charge the Hirer for any inspection or maintenance work carried out on the Plant during the Hire Period.

7. GROUND AND SITE CONDITIONS

- (a) The Hirer is deemed to have knowledge of the site, the site's access road, the property or land where the Plant is to be delivered or collected, loaded or unloaded, to work on, travel over, be transported over, be erected or dismantled on is suitable for the use of such Plant, and any electronic interference which may affect the Plant.
- (b) Subject to 7(a), if, in the opinion of the Hirer, the ground (including any private access road or track) is soft or unsuitable for the Plant, then the Hirer shall supply and lay suitable support in a suitable position for the Plant.
- (c) Any suitable support supplied by the Owner is provided solely to assist the Hirer under their duties within clause 7(b) and expressly not to relieve the Hirer of their 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 site costs and 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 repair, modify, or alter the Plant without the prior written permission of the Owner (including without limitation the changing or repair of any tyre/puncture). 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 their 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 adverse 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 the Owner's 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) be liable for all loss of or damage to the Plant, 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) For the avoidance of doubt, notwithstanding any agreement by the Owner to waive hire charges after any agreed period of use of the Plant, the Hirer's obligations specified under clause 13(b) shall continue for the duration of the Hire Period.
- (d) Notwithstanding the above the Hirer shall not be responsible for damage, loss, or injury, subject to clauses 1(b) and 7:
 - (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 physically erected/dismantled on site, provided always that such erection/dismantling is under the exclusive control of the Owner or their agent,
 - (iii) after the Plant has safely been removed from the site, and until it 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 including the site's access road, after it has safely joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer)
 - (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 including the site's access road, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer).

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 the Owner may arrange for such repairs to be carried out on site or at any location of the Owner's 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 the Owner 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. Where applicable, the Plant's telematics may be checked against the Hirer's statement or operator's signed timesheet, should any conflict arise, then the telematics will take precedence over all other records. (If there is any conflict between the signed timesheet and any other record taken, then the signed timesheet takes precedence.)
- (b) The Hirer shall be charged for any toolbox talks, briefings, inductions, mandatory training which the Owner's personnel have to attend prior to or when working on the Hirer's site.
- (c) 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.
- (d) Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The Hirer shall pay the Owner's invoice within 30 days net unless otherwise agreed.
- (i) Any query with the Owner's invoice must be raised in writing by the Hirer within 14 calendar days of receiving the invoice.
- (j) The Owner in their absolute discretion may agree to accept electronic records and data as an alternative to written statements of the number of hours, time record sheets and other information related to charging that the Hirer is required to provide to the Owner. Such electronic records and data may include but is not limited to telematics automatically generated by the plant and electronic log books.

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 at the Hirer's request, the Plant is actually worked or has been delivered to site or is on standby. The Hirer must inform the Owner if the Plant is going to be used at these times.

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 MONTH WITH QUALIFICATION AS TO HOURS

The full hire for the period in the Contract will be charged as per the Working Day or Working Week and an additional pro rata charge will be made for hours worked in excess of such period. An allowance will be made for breakdowns for up to the entirety of that Working Day providing always that where the actual hours worked are in excess of the breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. An allowance may be made for any Holiday Period that falls within the Working Day or Working Week, provided that the Plant is not available for the Hirer to use during that time.

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. PERIOD OF CHARGING

- (a) Within the Hire Period, an allowance may be made of not more than 1 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 1 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) Should the Hirer delay the commencement of the Hire Period for whatever reason, then the Owner reserves the right to charge the Hirer the idle time rate as defined in clause 25 for the intervening period
- (c) 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.
- (d) 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 bowsters. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner should the Hirer fail to comply with this clause.