

**Conditions of Contract for the Hire of Plant (Supplied without Operator)**

**1 Definitions**

- 1.1 The "Contract" shall mean the contract between the Hirer and the Contractor comprising the Hirer's Order, these conditions and any other documents (or parts thereof) specified in the Hirer's Order.
- 1.2 The "Contractor" shall mean the person, firm or company to whom the Hirer's Order is issued.
- 1.3 The "Hirer" shall mean the company so named in the Hirer's Order.
- 1.4 The "Hirer's Order" shall mean the order issued by the Hirer to the Contractor for the supply/hire of the Plant.
- 1.5 The "Site Agent/Plant Controller" shall mean the person or persons in the employ of the Hirer responsible for the hire of Plant
- 1.6 The "Period of Hire" shall mean the period commencing when the Plant is delivered to Site and ending on the date specified in the Hirer's Order or as agreed otherwise.
- 1.7 The "Plant" shall mean the quantity and description of the equipment specified in the Hirer's Order and any replacement or replacements thereof together with such accessories for the same as are required for its operation for the purposes of the Contract.
- 1.8 "Regulations" shall mean any enactment, order, regulation or other similar instrument of any Local Authority, EU or Government Body, as amended by any subsequent Regulation.
- 1.9 The "Site" shall mean the place or places specified in the Hirer's Order to which the Plant is to be delivered.
- 1.10 The "Hire Charge" shall mean the amount due to the Contractor and is the product of the agreed unit rate for Plant hire as specified in the Hirer's Order and the relevant Period of Hire.
- 1.11 "Mobile Plant" shall mean self-propelled Plant which, if it is used on the public highway, requires a Vehicle Excise Licence or other permit.
- 1.12 "Losses" means all costs, expenses, liabilities, injuries, direct, indirect or consequential loss, damages, claims, demands, proceedings or legal costs and judgements.

**2 Delivery of Plant**

- 2.1 The time and date of delivery of the Plant shall be that specified in the Hirer's Order unless otherwise agreed in writing between the Hirer and the Contractor. Where the Plant requires offloading and/or assembly, delivery shall not be deemed to have taken place until the Plant has been off-loaded and/or assembled by the Contractor and is ready for use by the Hirer.
- 2.2 If a route to the Site is specified in the Hirer's Order this shall be observed to avoid congestion, sensitive sites or other potentially hazardous circumstances.
- 2.3 All vehicles delivering to the Site shall comply with all HSE guidelines applicable from time to time including, but not limited to, flashing beacons, reversing warning devices, cameras, mirrors and vehicle signage. The Contractor shall procure that all delivery personnel shall wear as a minimum PPE comprising Hi-Vis vest, protective footwear and a safety helmet whilst on the Site and shall comply with all Regulations applicable to personnel working on the Site and any instructions given to such delivery personnel whilst on the Site.
- 2.4 The Contractor shall deliver, off-load and assemble (where applicable) the Plant at the Site. Loads shall be stacked, bundled and spaced in order that they can be safely offloaded. The Contractor shall remain responsible for loss of or damage to the Plant until completion of off-loading and assembly.
- 2.5 The Hirer shall have the right within three days of the date of delivery to notify the Contractor of any item or items omitted from the Plant or defective Plant and the Contractor shall immediately provide or replace any such item at his own expense.
- 2.6 If the Contractor fails to deliver the Plant in accordance with the terms of any Contract or is otherwise in breach of the terms of any Contract, the Hirer shall be entitled to claim damages for any costs, losses or expenses incurred by the Hirer (including without limitation any expenditure incurred by the Hirer in obtaining the Plant in substitution from another supplier) which are in any way attributable to the Contractor's breach or failure to deliver. The Contractor acknowledges that the costs, losses and expenses which may be incurred by the Hirer in the event of breach by the Contractor of the terms of any Contract include loss of productivity at the Site and performance penalties in relation to delays to work at the Site and that the Hirer shall be entitled to recover these from the Contractor pursuant to this Clause.

**3 Delivery in good order**

- 3.1 The Contractor shall ensure that the Plant meets any specification and is fit for any purpose described in the Hirer's Order, is of sound construction and condition, properly maintained and in good working order at the commencement of the Period of Hire. In particular the Contractor shall ensure that all provisions of Regulations and British Standard Codes of Practice (where applicable) concerning transportation, construction, maintenance, testing and inspection applicable to the Plant have been complied with and shall:
  - a) produce to the Hirer a copy of the current certificate of inspection required under any Regulations and
  - b) indemnify the Hirer from and against all Losses suffered or incurred by the Hirer as a result of any failure of the Plant to comply with such Regulations or Codes of Practice.

- 3.2 Without prejudice to clause 3.1 above the Contractor shall ensure that the Plant's tyres are in good condition on arrival at the Site. Punctures caused during use on Site will be paid for by the Hirer. Tyres damaged beyond repair will only be paid for by the Hirer on agreement in writing with the Site Agent/Plant Controller based on the wear percentage remaining when the damage occurs.

**4 Identification**

The Plant shall at all times remain the property of the Contractor and he shall mark it in such a manner as to make it easily identifiable. Such identification shall not be removed, defaced or deliberately covered up by the Hirer.

**5 Assignment and sub-letting**

- 5.1 The Hirer shall not transfer possession but may allow a third party/subcontractor to use the Plant or any of the accessories or equipment supplied therewith on the Site. The Hirer will remain responsible to the Contractor for the Plant in accordance with the Contract.
- 5.2 The Contract shall not be assigned by the Contractor. The Contractor shall not subcontract the whole or any portion of the Contract without the consent in writing of the Hirer, but such consent shall not relieve the Contractor from any obligations under the Contract.

**6 Payment**

- 6.1 Unless otherwise agreed in writing the Contractor shall render invoice(s) at the end of each month for all items of the Plant on hire during that month less any agreed adjustments to the Hire Charge due in accordance with Clause 7.3.
- 6.2 The Contractor shall provide with the invoice a list of the Plant to which the invoice relates in sufficient detail to enable the Hirer to check the amount due against records kept by him and shall indicate both items returned and those remaining on hire at the end of the month to which the invoice refers.
- 6.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 6.4 Unless otherwise agreed in writing the Hirer shall make payment by the end of the month following the month of presentation of a proper invoice.
- 6.5 If any sum payable by the Hirer under any Contract is not paid when due that sum shall bear interest from the due date until payment is made in full at 2% per annum over Barclays Bank plc base rate from time to time.

**7 Repairs and adjustments**

- 7.1 If at any time during the Period of Hire the Contractor is of the opinion that the Plant is in need of repair or adjustment the Contractor may stop, by agreement only with the Hirer, the use of the said Plant until repairs or adjustments have been made on the Site or, if required by Hirer, at the Contractor's own expense supply as soon as is reasonably practicable replacement Plant.
- 7.2 If at any time during the Period of Hire the Hirer is of the opinion that the Plant is in need of repair or adjustment the Hirer shall advise the Contractor and may suspend the operation of the Plant until the Contractor has carried out such repairs or adjustments on the Site or if required by the Hirer, has at the Contractor's own expense supplied replacement Plant.
- 7.3 The Hire Charge shall be reduced in proportion to the time lost due to any stoppage or suspension of use of the Plant during the Period of Hire under the provisions of Clauses 7.1 or 7.2 above.
- 7.4 No adjustment to the Hire Charge can be claimed where damage was due to neglect or default of the Hirer, his employees, servants or agents. However, if the Plant or item thereof is agreed to be beyond economic repair the Contractor shall as soon as is reasonably practicable replace it with Plant of similar age or condition.

**8 Maintenance of Plant**

- 8.1 Contractor's obligations.  
The Contractor shall at his own cost and at all times throughout the Period of Hire:
  - a) Provide, maintain and (where applicable) service the Plant in good, safe working order (except as provided for in Clause 8.2)
  - b) Ensure that all Regulations and manufacturer's instructions regarding the maintenance and (where applicable) servicing of the Plant in working order are complied with.
  - c) Replace all tyres on Plant as necessary and as soon as reasonably practicable, subject to Clause 3.2.
  - d) Repair or replace any Plant becoming unfit for use as soon as is reasonably practicable, provided that the unfitness was not due to any default of the Hirer.

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- 8.2 **Hirer's obligations.**  
The Hirer shall at his own cost:
- Maintain the Plant in clean condition and take all reasonable precautions to safeguard it and make the Plant available for collection by the Contractor from the Site at the end of the Period of Hire.
  - In the case of mechanical Plant, unless otherwise agreed in writing, provide fuel, oil and grease and carry out all reasonable routine attendance to water and oil levels and the maintenance of correct tyre pressures.
  - In the case of a battery-driven Plant, maintain batteries and carry out charging procedures in accordance with the Contractor's written instructions.
  - Provide reasonable facilities during normal working hours for the inspection, servicing, repair and maintenance of the Plant by the Contractor. Such work to be carried out by prior arrangement at times convenient to the Hirer.
- 9 Use of Mobile Plant on the public highway**
- 9.1 Mobile Plant shall not be used on any public highway without the Contractor's written consent. The Contractor shall procure that any Mobile Plant which is to be used on any public highway has a valid vehicle licence. The requirement to obtain the Contractor's consent under this clause shall not apply where notification in writing of such use is given to the Contractor by the Hirer prior to the delivery of the Plant.
- 9.2 Where Mobile Plant is used on the public highway the Hirer shall ensure that the driver holds a current British driving licence applicable to and is trained and certificated for using the said Plant.
- 10 Safe use of Plant**
- 10.1 In order to ensure safe use of the Plant in accordance with, but not limited to, PUWER, LOLER, COSHH, CPCs and all other applicable health and safety laws the Contractor shall provide:
- Appropriate Test and Inspection certificates.
  - Information, instruction and where necessary training in the operation and maintenance of the Plant.
  - Hazard data sheets relevant to items supplied.
- 10.2 The Hirer shall:
- Employ a trained and certificated operator (being not less than 18 years of age in the case of Mobile Plant) to operate the Plant.
  - Not permit the Plant to be overloaded or used for any purpose for which it was not designed or intended.
  - Save as permitted under paragraph 9, not permit the Plant to be moved from the Site without first obtaining the Contractor's consent, such consent to be confirmed in writing.
  - Take all reasonable steps to remain aware of the state and condition of the Plant and advise the Contractor as soon as reasonably practicable of the development of any faults.
- 11 Loss of or damage to Plant**
- 11.1 The Hirer shall notify the Contractor by telephone or agreed means as soon as reasonably practicable in the event of any accident, loss of or damage to the Plant as well as any breakdown howsoever caused.
- 11.2 Where such loss or damage is due to the neglect or default of the Hirer, his employees, servants or agents, the Hirer shall pay all reasonable costs incurred by the Contractor in effecting the necessary repairs or, where the Plant or item thereof is lost or agreed by the parties to be beyond economic repair, shall compensate the Contractor with an amount to be agreed but which shall in no case exceed the net invoice value paid by the Contractor for the said Plant or item thereof.
- 11.3 Save as set out in paragraphs 11.2 and 14.1 the Hirer shall be under no liability to the Contractor whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill, loss of rental, loss on disposal and like loss), howsoever caused arising out of or in connection with any breach by the Hirer of any of the terms of any Contract or any loss of or damage to the Plant howsoever caused.
- 11.4 Notwithstanding anything to the contrary in any Contract, neither party excludes or limits its liability for fraud or for death or personal injury resulting from the negligence of such party.
- 12 Determination of hire**  
Where the Period of Hire is stated in the Hirer's Order the Hirer shall have the right to terminate the Contract at any time by giving one week's notice in writing to the Contractor. Where the Period of Hire is not stated in the Hirer's Order the Hirer may terminate the contract giving such notice period as detailed in the Hirer's Order or where a notice period is not so stated it shall be one day.
- 13 Removal of Plant from Site**
- 13.1 The Contractor shall remove the Plant from the Site as soon as is reasonably practicable after receipt of the Hirer's telephone or written instructions to such effect and in any event shall remove the Plant from the Site by no later than the end of the day following the day on which the Hirer's instructions are received. When the Hirer terminates the Contract by telephone the Contractor shall provide an "off-hire reference" including the date and time that the hire shall cease. The Contractor shall be responsible for any dismantling and/or loading required to remove the Plant from the Site and shall be responsible for loss of or damage to the Plant from the commencement of dismantling and/or loading.
- 13.2 In the event that the Contractor fails to remove the Plant from the Site:
- within the period specified in Clause 13.1, the Hirer shall have no liability to the Contractor whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, loss of rental, loss on disposal and like loss), howsoever caused arising out of any loss of or damage to the Plant which occurs after the period within which the Plant should have been removed from the Site in accordance with Clause 13.1.
  - within seven days from the date of such instructions the Hirer shall have the right to return the Plant to the Contractor's premises during the Contractor's normal business hours and to recover the cost of such action from the Contractor.
- 13.3 The Contractor shall notify the Hirer in writing within seven days of the return of the Plant of any item missing or damaged. Items alleged to be damaged shall be retained, unused, for a further seven days to permit inspection by the Hirer. Clauses 11.2 and 11.3 shall apply to such items.
- 14 Damage to persons or property**
- 14.1 The Hirer shall indemnify the Contractor against all Losses in respect of injury to persons or damage to property arising out of or in connection with the use of the Plant during the Period of Hire unless such injury or damage shall arise (in whole or in part) from any act or omission of the Contractor, his employees, servants or agents, or from breach on the part of the Contractor of his obligations under the Contract.
- 14.2 The Contractor shall indemnify the Hirer against all Losses in respect of injury to persons or damage to property arising out of or in connection with any act or omission of the Contractor, his employees, servants or agents, or from breach on the part of the Contractor of his obligations under the Contract.
- 15 Insurance**  
The Contractor shall, but without limiting his responsibilities under the Contract, insure against any damage, loss or injury which may occur to any property or any person for which he may be responsible or liable to indemnify the Hirer.
- 16 Secrecy**
- 16.1 No photographs of any of the Hirer's equipment, installations or property shall be taken without the Hirer's prior consent in writing. The Contractor (and the Contractor will procure that, his employees, servants and agents) shall keep secret and shall not divulge to any third party any information of a confidential or proprietary nature which is given by the Hirer to the Contractor or which becomes known to the Contractor through his performance of the Contract.
- 16.2 The Contractor, his employees, servants and agents shall not mention the Hirer's name in connection with the Contract or disclose the existence of the Contract in any publicity material or other similar communications to third parties without the Hirer's explicit prior consent in writing.
- 17 Special Conditions**  
Any further conditions governing this Contract shall be specified as Special Conditions in the Hirer's Order and if there is any conflict or inconsistency between such Special Conditions and these conditions the Special Conditions shall prevail.
- 18 Set Off**  
The Hirer may at any time or times set off any liability of the Contractor to the Hirer against any liability of the Hirer to the Contractor. The Hirer's rights under this clause are without prejudice to any other rights or remedies available to the Hirer.
- 19 Variation**  
No variation of any Contract shall be effective unless in writing signed by a duly authorised officer of each of the parties.
- 20 Waiver**  
No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or some other right, power or remedy.
- 21 Law and Jurisdiction**  
The construction, validity and performance of the Contract shall be governed by the Laws of the country of the Hirer's Order issuing office and the parties submit to the exclusive jurisdiction of the Courts of that country.