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# TERMS & CONDITIONS OF HIRE

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April 2022



**APRIL 1, 2022**

**1 Leaway, Lea Bridge Road, Leyton, London E10 7QW**

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## 1. DEFINITIONS

- A) The “Owner” is the Company, firm or person letting the plant on hire and includes their successors, assigns or personal representatives.
- B) The “Hirer” is the Company, firm, person, Corporation or public authority taking the Owner’s plant on hire and includes their successors and personal representatives.
- C) “Plant” covers all classes of plant, machinery, equipment and all accessories thereof, which the Owner agrees to hire to the Hirer.
- D) A “day” shall be 8 hours or if the day is Friday, it shall be 7 hours unless otherwise specified in the Contract.
- E) A “working week” covers the period from the starting time on the Monday to the finishing time on the Friday.
- F) The “hire period” shall commence from the time when the plant leaves the Owner’s depot and shall continue until the plant is received back at the Owner’s depot or other agreed location.
- G) The period of hire should not exceed 180 days.

## 2. EXTENT OF CONTRACT

No conditions other than specifically set forth in the Offer and Acceptance and herein shall be deemed to be incorporated in 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 and Acceptance. The Contract does not create any right enforceable by or purport to confer any benefit on any person not a party to it except that a person who is 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 agreed in writing.

## 4. UNLOADING AND LOADING

The Hirer shall be responsible for the unobstructed access and, unless otherwise agreed in writing, for unloading and loading of the plant at the site, and any personnel shall for all purposes in connection with their employment in the loading and/or unloading shall be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of Clause 13) who alone shall be responsible for all claims

arising in connection with unloading and or loading of the plant by, with the assistance of, such personnel.

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

Plant is delivered in good working order along with Certificates of Conformity, inspection/repair reports. The Hirer shall when hiring plant take all reasonable steps to keep himself acquainted with the state and condition of the plant, if such plant be at work or use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accident whether directly or indirectly arising there from. The Hirer shall be responsible for its safe keeping, use in a workmanlike manner with the Manufacturer's rated capacity and return on the completion of hire in good order, empty of all materials (material left in the equipment will be charged to empty and for disposal of the waste material will be added to this charge).

#### 6. SERVICING AND INSPECTION

The Hirer shall at all reasonable times allow the Owner, his Agents and Insurers to have access to the plant to inspect, test, adjust, repair or replace the same. So far as is reasonably possible, such work will be carried out at times to suit the convenience of the Hirer.

7. The Hirer shall be responsible for all the expense involved arising from any breakdown and all loss or damage incurred by the Owner 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, loss or damaged. The hirer is responsible for the cost of spares, to the plant involved in breakdown from all other causes.

#### 8. OTHER STOPPAGES

No other claims will be admitted (other than those allowed for under "Breakdown" or for "idle time" as herein provided), for stoppages through causes outside the Owners control, including bad weather or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any plant from soft ground.

#### 9. LOSS OF OTHER PLANT DUE TO BREAKDOWN

Loss of other plant due to breakdown or stoppage 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.

#### 10. 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 loss (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 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 Hirers sole and exclusive remedy in respect of 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 has not been made.

#### 11. HIRERS 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 this Agreement.
- b) During the continuance of the hire 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 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 respect of all costs and charges in connection therewith whether arising under statute or common law. In the event of loss or damage to the plant, hire charges shall be continued at idle time rates as defined in Clause 25 until settlement has been effected.

- c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury due to or arising:
1. Prior to delivery of any plant to site (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to it leaving such highway) where the plant is in transit by transport of the Owner or as otherwise arranged by the Owner.
  2. After the plant has been removed from 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) under its own power with a driver supplied by the owner.

#### 12. NOTICE OF ACCIDENTS

If the plant is involved in any accident resulting in an injury to persons or damage to property, immediate notice must be given to the Owner by telephone and confirmed in writing to the Owner's office. In relation to a claim in respect of which the Hirer is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owners consent in writing.

#### 13. REHIRING ETC.

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

#### 14. CHANGE OF SITE

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

#### 15. RETURN OF PLANT FOR REPAIRS

If during the period the Owner decides that urgent repairs to the plant are necessary, he may arrange for such repairs to be carried out on site or at Owners workshop. In that event 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 the clauses 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 determine 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 determination occurs.

- A) Within three months from the commencement of hire, 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 hire, the Owner (but without prejudice to any of the provisions of Clauses 9 and/or 13) shall be liable for the only the cost of reloading and transport and return transport.

#### 16. BASIS OF CHARGING

- a) The hirer shall render to the Owner for each week an accurate statement of the number of hours the plant worked each day.
- b) Full allowance will be made for breakdown periods resulting from mechanical or electrical faults. Owner except where breakdown is due to acts of omissions of third parties and or the Hirers misuse, misdirection or negligence, subject however to the provisions of Clauses 8 of this Agreement.
- c) Breakdown time in respect of such periods shall be allowed for not more than 8 hours per day Monday to Thursday and not more than 7 hours on Friday less the actual hours worked.
- d) Plant shall be hired out either.
  - 1) For a stated minimum number of hours per day or per week or
  - 2) Without any qualifications as to minimum hours. Odd days at the beginning and at the end of the hire period shall be charged pro rata.

#### 17. PLANT HIRE 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.

#### 18. COMMENCEMENT AND TERMINATION OF HIRE (TRANSPORT OF PLANT)

- a) The hire period shall commence from the time when the plant leaves the Owner's depot and shall continue until the plant is received back at the Owner's depot but an allowance shall be made of not more than one day's hire charges each way for travelling time.

#### 19. NOTICE OF TERMINATION OF CONTRACT

Owner requires notice by email to confirm off hire of plant, plant must be empty and ready to be collected before Owner arranges transport, plant will remain on hire until such confirmation has been sent via email.

#### 20. 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 named depot at completion of hire. The Owner will also charge for any waiting time occurred whilst delivering plant.

#### 21. GOVERNMENT REGULATIONS

The Hirer will be responsible for the compliance with relevant regulations issued by the Government or Local Authorities, including Regulations under the Factories Acts, Health and Safety at Work Act etc.

#### 22. PROTECTION OF OWNER'S RIGHTS

- a) The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possessions of, or otherwise deal with the plant except as provided under Clause 13 and shall protect the same against distress, execution of 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) If the Hirer makes default in punctual payment of any sum due to the Owner for hire of plant or other charges, or shall fail to observe and perform the terms and conditions of this Contract, or if the Hirer shall suffer any distress of execution to be levied against him or make or propose to make any arrangement with creditors or become 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 shall cause 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, this Contract may forthwith be determined by notice from the Owner to the Hirer (notwithstanding that the Owner may have waived some

previous default or matter of the same or like nature). The Contract shall thereupon be deemed determined by reason of the Hirer's breach and it shall thereupon be lawful for the Owner to retake possession of the said plant and for that purpose enter into or upon any premises where the same may be and the determination of the hiring under this Condition shall not affect the right of the Owner to recover from the Hirer any monies due to the Owner under the Contract of any of the Owner's rights and remedies. In particular, without limitation, the Owner shall be entitled to claim the hire charges outstanding as the date of determination of the hire under this clause, return transport charges under clause 20, and damages for the Hirer's actual or deemed breach of the Contract under this Clause.

### 23. DISPUTE RESOLUTION

- a) If the original site is in England or Wales, the proper law of the Contract shall be English law. If the original site is in Scotland, the Contract shall in all respects be construed and operated as a Scottish contract and shall be interpreted in accordance with Scots law. If the original site is in Northern Ireland, the proper law of the Contract shall be Northern Ireland law.
- b) The Scheme for the Construction Contracts contained in the Scheme for the Construction Contracts (England and Wales) Regulations 1998, or any amendment or re-enactment thereof for the time being in force, shall apply to the Contracts. The person (if any) specified in the Contracts 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. In paragraph 21 of the Scheme "this paragraph" shall be deleted and "paragraph 20" substituted.
- c) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator; and shall submit to the 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 defense 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.