



MODEL CONDITIONS OF THE HIRING OF PLANT (EFFECTIVE 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 or 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.

SUPPLEMENTARY CONDITIONS APPLICABLE TO THE HIRE OF PLANT TO BE READ IN CONJUNCTION WITH THE ABOVE CPA MODEL CONDITIONS FOR THE HIRING OF PLANT ("Supplementary Conditions")

EXPLANATORY NOTE: These Supplementary Conditions are in addition to and take precedence over the CPA Model Conditions for the Hiring of Plant set out above (hereinafter known as the Conditions).

THE HIRER SHOULD PAY SPECIFIC ATTENTION TO SUPPLEMENTARY CONDITIONS 4, 6, 7, 8 AND 10

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions, unless the context requires otherwise, and rules of interpretation in Supplementary Condition 1 shall apply to the Conditions and these Supplementary Conditions in addition to the definitions set out in Condition 1:
Account: an account provided by the Owner to the Hirer subject to such Hirer satisfying the relevant requirements of the Owner to do so;
Additional Terms: any terms varying or adding to the Conditions or these Supplementary Conditions that are included within the order acknowledgement or otherwise agreed by the Owner pursuant to Condition 2.2;
Contract: a contract between the Owner and the Hirer for purchase of Goods and/or Services in accordance with and subject to the Conditions (including these Supplementary Conditions, a quotation, order, order acknowledgment and any Additional Terms); and
Owner: William G Search Limited, a company registered in England and Wales (CRN: 407145), whose registered office is at Market Works, Whitehall Road, Leeds LS12 6EP.
- 1.2 Reference to a statute or statutory instrument is a reference to it as it is in force for the time being and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation made under it.
- 1.3 Reference to one gender includes all genders, reference to the singular includes the plural and, in each case, vice versa, and reference to a person includes companies, firms and corporations.
- 1.4 Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall, except in relation to Condition 1.1, be deemed to be followed by the words "without limitation", shall be construed as illustrative, and shall not limit the sense of the words, description, definition, phrase or term preceding such terms.
- 1.5 Headings do not affect the interpretation of the Conditions.

2. APPLICATION OF TERMS

- 2.1 Subject to Supplementary Condition 2.2, the Conditions and Supplementary Conditions apply to all Contracts to the exclusion of all other terms and conditions. No terms or conditions of the Hirer (whether endorsed on, delivered with, or contained in the Hirer's purchase order or other documents) shall form part of any Contract and any attempt by the Hirer to exclude, vary or limit any Supplementary Conditions shall be void.
- 2.2 Any variation to the Conditions or Supplementary Conditions shall have no effect and shall not form part of the Contract unless expressly agreed in writing by the Owner.
- 2.3 The Owner may provide the Hirer with an oral or written quotation. A quotation so provided is an invitation to treat by the Owner to hire the Plant, subject to the Conditions and Supplementary Conditions, to the Hirer. Unless otherwise agreed, a quotation is valid for 30

days from its date, provided that the Owner has not previously withdrawn it.

- 2.4 An acceptance of a quotation or the placing of an order by the Hirer shall be deemed to be an offer, subject to the Conditions and Supplementary Conditions, to hire the Plant stated therein from the Owner.
- 2.5 No quotation accepted or order placed by the Hirer shall be deemed to be accepted by the Owner until the Owner confirms acceptance orally or in writing or, if earlier, delivers the Plant.
- 2.6 No binding Contract will come into existence until an order acknowledgement is given by the Owner in accordance with Supplementary Condition 2.5 or, if earlier, by the Owner delivering the Plant.

3. DESCRIPTION

- 3.1 The quantity and description of the Plant is set out in the Owner's quotation and/or order acknowledgement and the Contract.
- 3.2 All descriptions, drawings, specifications, technical data and illustrations and any advertising or other materials issued by the Owner, or contained in the Owner's brochures or website, are approximations and for information purposes only, should not be relied on by the Hirer as precise or construed literally and shall not form part of the Contract.
- 3.3 The Owner reserves the right to change any descriptions, drawings, specifications, technical data, illustrations, brochures, advertising materials, its website and any other materials provided at any time without notice.

4. HIRER'S OBLIGATIONS AND WARRANTIES

- 4.1 The Hirer warrants that:
 - (a) it has the necessary authority to enter into the Contract;
 - (b) all the information provided to the Owner is true and accurate and acknowledges that the Owner is relying upon such information in relation to its performance of the Contract;
 - (c) the Plant will be kept during the hire period and returned to the Owner at the end of the hire period in a clean and good state of repair and condition;
 - (d) it will not leave and will not allow anyone else to leave any property in the Plant at the end of the hire period.
- 4.2 The Hirer agrees and warrants that if it breaches Supplementary Condition 4.1(d):
 - (a) any property left in the Plant belongs to the Hirer and has been abandoned by the Hirer;
 - (b) the Owner is permitted to dispose of any property left in the Plant; and
 - (c) the Hirer shall be liable to pay the Owner on demand any and all reasonable costs and expenses incurred by the Owner as a result of the Hirer breaching Supplementary Condition 4.1(d) and the Owner shall be entitled to deduct such costs and expenses from any monies lawfully due to the Hirer from the Owner.
- 4.3 In addition to the Owners rights under Condition 33, the Hirer will provide the Owner and/or his agents with unobstructed access to the Hirer's property and/or site where the Plant is located, or (where applicable) obtain the authority from the site owner and/or manager where the Plant is located to allow the Owner and/or his agents access to the site or premises in order to recover the Owner's Plant without any obstruction.

5. PRICE

- 5.1 Unless otherwise agreed by the Owner in writing, the price for the hire of the Plant shall be the price stated in the quotation or order acknowledgement provided by the Owner to the Hirer in accordance with Supplementary Conditions 2.3 and 2.4, together with any VAT ("Price").

6. PAYMENT

- 6.1 Unless otherwise agreed in writing, for Hirers with an Account that has not reached its credit limit each invoice submitted by the Owner shall be paid within 30 days of the end of the month following the month of invoice. For Hirers without an Account, or with an Account that has reached its credit limit, the Price shall be paid for at the time of the order or on receipt of the Owner's invoice as directed by the Owner. Time for payment shall be of the essence.
- 6.2 The Hirer may provide the Owner with a continuous payment authority (CPA) to make payments under Supplementary Condition 6.1, a CPA is an authority given by the Hirer to the Owner, to enable the Owner to take money from the Hirer's nominated bank

using a debit card and/or credit card. The terms of such CPA are as follows:

- (a) the Owner will contact the Hirer via email at least ten (10) days prior to any payment date due to notify the Hirer a payment is due;
 - (b) the Owner will never take money by way of CPA before the payment date;
 - (c) the Hirer may cancel the CPA at any time by notifying the Owner and/or contacting the Hirer's bank and/or credit card provider, however the Hirer must ensure that he has made alternative payment arrangements prior to the Payment Date to avoid any breach of the payments terms of the Contract; and
 - (d) If a payment date falls on a Sunday or Bank Holiday, then payment may be taken on the next working day, or may be taken by a method that can be processed on that day.
- 6.3 The Owner reserves the right to exercise its absolute discretion to cancel or suspend the Account by notice.
- 6.4 If the Owner exercises its right to cancel or suspend the Account, in accordance with Supplementary Conditions 6.3, all sums owed to the Owner by the Hirer at the date of cancellation or suspension shall be payable on demand and the Owner may continue trading with the Hirer on the basis set out in Supplementary Condition 6.1 for Hirers without an Account.
- 6.5 No payment shall be deemed to have been received until the Owner has received cash or cleared funds and all sums payable to the Owner under a Contract shall become due immediately on its termination, howsoever arising.
- 6.6 The Hirer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Hirer has a valid court order requiring an amount equal to such deduction to be paid by the Owner to the Hirer.
- 6.7 Without prejudice to any of its other remedies, if any amount due from the Hirer is not paid in accordance with the Supplementary Conditions the Owner may do all or any of the following:
- (a) treat any or all Contracts as repudiated by the Hirer;
 - (b) without notice suspend or cancel delivery of Plant under any other Contract until the Hirer pays the outstanding amount(s) in full;
 - (c) appropriate any payment made by the Hirer under any other Contract with the Owner to pay for any outstanding amounts as the Owner may, in its sole discretion, think fit;
 - (d) charge interest at the annual rate of 6% above the base rate of HSBC Bank Plc;
 - (e) claim interest under Late Payment of Commercial Debts (Interest) Act 1998.
- 6.8 On termination of the Contract, howsoever caused, the rights of the Owner in this Supplementary Condition 6 shall remain in effect.
- 7. CANCELLATION RIGHTS**
- 7.1 If the Hirer cancels the Contract before delivery of the Plant the following amounts are payable by the Hirer
- (a) more than 180 days prior to delivery 20% of the Price;
 - (b) between 179 and 120 days prior to delivery, 40% of the Price;
 - (c) between 119 and 60 days prior to delivery, 60% of the Price;
 - (d) between 59 and 30 days prior to delivery, 80% of the Price;
 - (e) less than 29 days prior to delivery, 90% of the Price;
- or such other amount as the Owner considers reasonable in the circumstances.
- 7.2 The Hirer acknowledges and agrees that the amounts payable under Supplementary Condition 7.1 are a genuine pre-estimate of loss by the Owner.
- 7.3 Any amounts payable by the Hirer under Supplementary Conditions 7.1 shall be invoiced by the Owner within 14 days of the cancellation date and shall be payable by the Hirer in accordance with Supplementary Condition 6.
- 8. LIMITATION OF LIABILITY**
- 8.1 Subject to Condition 12, 13 and Supplementary Condition 9, Supplementary Condition 8 sets out the entire financial liability of the Owner (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Hirer in respect of any breach of the Contract and any representation, statement, tortious act or omission, including negligence, arising under or in connection with the Contract.
- 8.2 Subject to Supplementary Conditions 8.3 to 8.5 the Owner('s):
- (a) shall not be liable to the Hirer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise (in each case whether direct, indirect or consequential) or any claims for

consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract;

- (b) total liability in contract, tort (including breach of statutory duty or negligence), misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of the Contract shall be limited to the greater of £50,000 or 300% of the Contract Price.
- 8.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 Condition 12 and Supplementary Conditions 8.2 and 8.3 do not prevent the Hirer from claiming foreseeable loss of or damage to the Hirer's physical property and nothing in the Conditions or Supplementary Conditions limit in any way the Owner's liability for:
- (a) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979; or
 - (b) losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
 - (c) any other matter for which it would be illegal or unlawful for the Owner to exclude or attempt to exclude liability.
- 8.5 Nothing in the Conditions or Supplementary Conditions excludes or limits the Owner's liability for death or personal injury caused by the Owner's negligence or for fraud or fraudulent misrepresentation.
- 8.6 Nothing in the Conditions or Supplementary Conditions affects the Hirer's legal rights. Advice about your legal rights is available from your local Citizen's Advice Bureau or trading standards office.

9. FORCE MAJEURE

- 9.1 The Owner reserves the right to defer the date of delivery of the Plant or cancel the Contract (without liability to the Hirer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, labour disputes (other than in relation to the Owner's own workforce), or restraints or delays affecting suppliers or carriers, or inability or delay in obtaining supplies of adequate quality, provided that, if the event in question continues for a continuous period in excess of 10 days, the Hirer shall be entitled to give notice in writing to the Owner to terminate the Contract.

10. INDEMNITY

- 10.1 In addition to the indemnity set out in Condition 13(b), the Hirer shall be liable to pay the Owner (on written demand) for, and indemnify the Owner against, all reasonable costs, expenses and losses sustained or incurred by the Owner (including, but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation, damage to property, loss of opportunity to deploy resources elsewhere, legal costs on an indemnity basis) arising directly or indirectly from the Hirer's fraud, negligence or failure to comply, or unreasonable delay in complying, with any of the Conditions or Supplementary Conditions.

11. GENERAL

- 11.1 If there are any differences between the information within the quotation and the order acknowledgement in respect of any Contract the latter shall prevail.
- 11.2 Each right or remedy of the Owner under the Contract is without prejudice to any other right or remedy of the Owner whether under the Contract or not.
- 11.3 All intellectual property rights, including, without limitation, copyright and trademarks, and all other rights in any documents or materials provided by the Owner to the Hirer under the Contract shall belong to the Owner.
- 11.4 Except as permitted by law, the Hirer shall not disclose any confidential information or commercial know-how provided by or relating to the Owner.
- 11.5 If any Condition or Supplementary Condition is found by any court to be wholly or partly illegal, invalid, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining Conditions and Supplementary Conditions, and the remainder of such Condition or Supplementary Condition, shall continue in full force and effect. In the event that such court decides that such Condition or Supplementary Condition is not severable, the parties agree to substitute such Condition or Supplementary Condition

with a legal, valid, enforceable and reasonable Condition or Supplementary Condition which achieves, to the greatest extent possible, the same commercial effect as the original Condition or Supplementary Condition.

- 11.6 Failure or delay by the Owner to enforce, or partially enforce, any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Owner of any breach of, or any default under, any provision of the Contract by the Hirer shall be in writing and shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other provisions of the Contract.
- 11.7 All notices sent by the Hirer to the Owner must be sent to the Owner at its registered address (as detailed in Supplementary Condition 1) or by email (conditions@wgsearch.co.uk) or facsimile or as otherwise agreed by the Owner. The Owner may send notices to the Hirer at the email or postal address, or by facsimile to the number, provided by the Hirer to the Owner.
- 11.8 All communications between the parties about the Contract, including any notices to be sent or received under the Contract, must be in writing. Notices shall be deemed served on delivery if delivered by hand, 48 hours after posting if sent by post, and on completion of transmission if sent by email or facsimile.