

## Vp plc - HIRE CONDITIONS

### The Construction Plant-Hire Association model conditions for the hiring of plant (These conditions are not to be used for consumer contracts)

#### 1. DEFINITIONS

- (a) The "Owner" is the Company, firm or person letting the plant on hire and includes their successors, assignees 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 or personal representatives.
- (c) "Plant" covers all classes of plant, machinery, vehicles, equipment and accessories therefore, which the Owner agrees to hire to the Hirer.
- (d) A "day" shall be 8 hours or if the day is a Friday it shall be 7 hours, unless otherwise specified in the Contract.
- (e) A "working week" covers the period from starting time on Monday to finishing time on Friday.
- (f) 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.
- (g) A "Consumer Contract" is a contract entered into with a person acting in his own capacity and not for or on behalf of any business or trade entity.

#### 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 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 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 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 alone shall be 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 the terms of the Contract and to the Hirer's satisfaction, provided that where plant requires to be erected on site, the periods above stated shall be calculated from the date of completed erection of plant. The Hirer shall be responsible for its safe keeping, use in a workmanlike manner within the manufacturer's rated capacity and return on the completion of the hire in equal good order (fair wear and tear excepted).
- (b) The hirer shall when hiring plant without Owner's operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the plant. If such plant be continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom.
- (c) The current 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 hire.

#### 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 possible, such work will be carried out at times to suit the convenience of the Hirer.

#### 7. TIMBER MATS OR EQUIVALENT

- (a) If the ground (including any private access road or track) is soft or unsuitable for the plant to work on, travel, or be transported over without timbers or equivalents the Hirer shall supply and lay suitable timbers or equivalent in a suitable position for the plant to travel over, work on, or be transported over, including for the purpose of delivery and collection.
- (b) Where the hire is for lifting equipment, any sound timber or other material supplied by the Owner for use with outriggers/stabilisers is provided solely to assist the Hirer and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the lifting equipment under the imposed loading.

#### 8. HANDLING OF PLANT

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) who also shall be responsible for all claims arising in connection with the operation of the plant by the said drivers/operators/persons. The Hirer shall not allow any other person to operate such plant without the Owner's previous consent to be confirmed in writing.

#### 9. BREAKDOWN, REPAIRS AND ADJUSTMENT

- (a) When the plant is hired without the Owner's driver or operator any breakdown or the unsatisfactory working of any part of the plant must be notified immediately to the Owner. Any claim for breakdown time will only be considered from the time and date of notification.
- (b) Full allowance for the hire charges and for the reasonable cost of repairs that have been authorised by the Owner will be made to the Hirer for any stoppage due to breakdown of 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 the plant without written authority 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/repared without awaiting authorisation from the Owner. The Hirer is responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture.
- (d) The Hirer shall be responsible for all 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 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" or for "Idle Time", as herein provided), for stoppages through causes outside the Owner's 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.

#### 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 a 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 whatever the 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 economical 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.

#### 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 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 of 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:
  - (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, always provided 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 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 notice must be given to the Owner by telephone and confirmed in writing to the Owner's office. In relation to any 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 Owner's consent in writing.

**15. RE-HIRING ETC.**

The plant or any part thereof shall not be re-hired, sub-let, or lent to any third party without the 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 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 he may arrange for such repairs to be carried out on site or at any location of his nomination. 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 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 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 only for the cost of reloading and return transport.

**18. BASIS OF CHARGING**

- (a) The Hirer shall render to the Owner for each week an accurate statement of the number of hours the plant has worked each day. Where the plant is accompanied by the Owner's driver or operator, the Hirer shall sign the employee's Time Record Sheets. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the Time Record 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 Hirer's misuse, misdirection or negligence, subject however to the provisions of Clause 8 of this Agreement.
- (c) Breakdown time in respect of such periods shall be allowed for not more than 8 hours Monday to Thursday and not more than 7 hours on Friday less the actual hours worked.
- (d) Plant shall be hired out either:
  - (i) for a stated minimum number of hours per day or per 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 requires 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 hire, such modification of the hire charge and the period for which it shall apply shall be stated on the Hire 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 QUALIFICATIONS 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**

If no breakdown occurs, 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 week of 39 hours shall be reduced by 8 hours Monday to Thursday and 7 hours Friday for each day's statutory holiday occurring in such week, provided that the plant does not work on the holiday.

**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 HIRE (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 rate shall be paid for the period of use on that day. If more than one day be 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 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) An allowance of not more than one day's travelling time shall be allowed when the plant is travelling to a site other than that specified in the Contract provided that:
  - (i) consent to such transfer has been given by the Owner under Clause 16, and,
  - (ii) the plant is moved by means other than under its own power, and,
  - (iii) the plant shall have been on the site specified in the Contract or on any other site to which consent to transfer has been given under Clause 16 for a period of at least 14 days.

**24. NOTICE OF TERMINATION OF CONTRACT**

Where the period of hire is indeterminate or having been defined becomes indeterminate the Contract shall be determinable 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.

**25. IDLE TIME**

When the plant is prevented by prolonged inclement weather from working for a complete week, the charge shall be two thirds of the hire rate or such other idle time rate as is stated in the Offer. If the plant works for any time during the guaranteed hire period then the whole of that guaranteed minimum period shall be charged as working time. In any case no period less than one 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 charged 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 contracted 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 employer'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 and fares for drivers, operators and any person supplied by the Owner, similar expenses 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.

**29. SHARPENING DRILLS/STEELS ETC.**

The cost of re-sharpening 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.

**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 named depot or other agreed location on completion of the hire period.

### 32. GOVERNMENT REGULATIONS

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

### 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) 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 or execution to be levied against him or make or propose 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 shall do or 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 a like nature). The Contract shall thereupon be deemed determined by reason of the Hirer's breach and it shall 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 or any of the Owner's rights and remedies. In particular, without limitation, the Owner shall be entitled to claim the hire charges outstanding as at the date of determination of the hire under this clause, return transport charges under clause 31, and damages for the Hirer's actual or deemed breach of the Contract under this Clause.

### 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 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(d) and (e), 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 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 Construction Contracts contained in the Scheme for Construction Contracts (England and Wales) Regulations 1998, or any amendment or re-enactment thereof for the time being in force, shall apply to the Contract. 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. 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 summary judgement 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.

### VP PLC TERMS OF PAYMENT AND SPECIAL CONDITIONS

The sections above represent the Construction Plant-hire Association ("CPA") Model Conditions. The special conditions below ("Special Conditions") and the CPA Model conditions above ("Model Conditions") (together with all other documents referred to therein) constitute the entire agreement between the parties with respect to all matters referred to herein and all other understandings, agreements, warranties, conditions, terms or representations whether expressed or implied (whether by statute, common law or otherwise) are excluded to the fullest extent permitted by law. The Hirer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of the Owner prior to entering into the Contract, whether such statement was made orally or in writing, but nothing in the Model Conditions or the Special Conditions shall exclude or limit the liability of the Owner for fraudulent misrepresentation.

Nothing in these Special Conditions or the CPA Model Conditions shall exclude or limit the Owners liability to an individual for death or personal injury caused by the Owner's negligence.

In the event of any conflict or inconsistency between these Special Conditions and the Model Conditions, the Special Conditions shall prevail. The Model Conditions and Special Conditions take precedence over the Hirer's conditions of purchase unless otherwise agreed to in writing by the Owner.

### 36. DEFINITIONS

"Contract" means a legally enforceable contract entered into between the Owner and the Hirer for the hire of Plant pursuant to the Model Conditions and the Special Conditions.

"Force Majeure" means any event affecting the performance of any provision of the Contract arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of the Owner, including but without limitation, any abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supplies, war, military operations, riot, crowd disorder, strike, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or authority.

### 37. BREACH OF CONTRACT

- (a) The Owner may terminate any contract for the hire of plant ("Contract") forthwith at any time, without prejudice to any other claim or right the Owner may make or exercise, if the Hirer shall commit any breach of Contract or if any distress or execution shall be levied on the Hirer or if any application is made for an interim order in respect of its affairs under the Insolvency Act 1986 or any superseding legislation or if the Hirer shall enter into any negotiations for arrangement or composition with its creditors or commit any act of bankruptcy or die or if any petition in bankruptcy or for an administration order shall be presented against it or if the Hirer gives notice of a creditors' meeting under section 98 of the Insolvency Act 1986 or any superseding legislation, or if any resolution is proposed or petition presented to wind up the Hirer (otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations of the Hirer under the Contract) or if the receiver of the Hirer's assets or undertaking or any part thereof shall be appointed or if the Hirer becomes subject to an administration order.
- (b) Without prejudice to the Owner's other rights and remedies on termination of a Contract under Clause 37(a) above, the Owner's consent to the Hirer's possession of the Plant shall terminate immediately, the Hirer shall return the Plant forthwith to the Owner, failing which the Hirer shall ensure that the Owner may at any time enter onto any premises where the Plant is situated for the purpose of removing the Plant (the cost of doing which be borne by the Hirer) and the Hirer shall forthwith pay to the Owner all charges owing in respect of the Plant (whether invoiced or not).

### 38. LIMITATION OF LIABILITY

Without prejudice to the other Special Conditions and Model Conditions, in the event that the Owner is held to be liable for any loss, expenditure or damage however arising in connection with the hire of Plant, such liability shall be limited to the total hire charges (if any) (excluding VAT) received by the Owner from the Hirer in respect of the unit of Plant which has caused such loss, expenditure or damage or to which such loss, expenditure or damage is related.

### 39. WARRANTIES

- (a) Save as expressly provided in these Special Conditions and Model Conditions the Owner does not make any representation concerning the condition, performance, qualities or fitness for a particular or any purpose of the Plant.
- (b) All drawings, illustrations, designs, plans, performance figures, computations, descriptions, weights and measurements supplied by the Owner to the Hirer are approximations only and shall not form part of the contract of hire between the Owner and the Hirer.
- (c) The Hirer warrants that all information and data supplied to the Owner by the Hirer, its agents or representatives, is accurate and fully comprehensive for the purpose of fulfilling the contract of hire between the Owner and Hirer.
- (d) The Hirer is relying on his own skill and judgement in relation to the Plant irrespective of any knowledge which the Owner or its servants or agents may possess or any representation the Owner or its servants or agents may have made, including as to the purpose for which the Plant is supplied, or as to its suitability or specification or performance of capability.

### 40. SPECIFICATIONS

- (a) The advice and suggested configurations given in support of the Plant is unless expressly agreed to the contrary given gratuitously and based solely on the information provided by the Hirer.
- (b) No attempt is or can be made to check the validity of any information provided by the Hirer or ascertain what further information should be taken into account and accordingly any configurations are suggested only. The Hirer must verify and be satisfied with the completeness of the information provided to the Owner and to ascertain the accuracy and validity of the interpretation of information presented by the Owner to the Hirer and whether the suggested configuration can be utilised on the relevant project either safely or at all.  
Accordingly the Hirer must rely on his own skill and judgement and no liability shall be attached to the Owner in respect to any loss injury or damage of any kind whatsoever should the configuration be proven unsuitable unstable or unworkable except for death or personal injury resulting from the Owner's negligence.
- (c) Any changes to site conditions or other information provided by the Hirer must be notified in writing to the Owner immediately. The Owner reserves the right to nullify and withdraw the advice or configurations without notice for any changes to information either notified or otherwise. If the Hirer fails to notify the Owner of such changes the Owner takes no further responsibility whatsoever for the continued use of the Plant.

### 41. RECEIPT OF PLANT

The acceptance or use of the Plant by or on behalf of the Hirer shall be conclusive evidence that the Plant was delivered in a satisfactory condition accompanied by all the necessary operating instructions and other literature necessary for the safe and correct use of the Plant.

#### 42. CONSEQUENTIAL LOSS

Without prejudice to the provisions of Clause 12 or any other clause in the Model Conditions or the Special Conditions, the Owner shall under no circumstances be liable for any injury or for any indirect or consequential loss or damage of any kind whatsoever including but without limitation, loss of profit, loss of business, economic loss, loss of goodwill or otherwise however such injury loss or damage is caused arising out of any breach of contract, tort or breach of statutory duty or misrepresentation whatsoever except for death or injury resulting from the Owner's negligence or unless specifically implemented under a separate agreement. The Hirer undertakes to indemnify the Owner in all claims in respect of any damage expense or loss sustained by a third party however caused except for death or personal injury resulting from the Owners negligence.

#### 43. FORCE MAJEURE

- (a) If by reason of Force Majeure, the Owner is or anticipates that it will be prevented or hindered from fulfilling the substance of its obligations under the Contract, then the Owner shall notify the Hirer immediately and the Hirer shall be entitled if such Force Majeure subsists for a period of three (3) months, to cancel or suspend the Contract by giving notice in writing to the Owner.
- (b) In the event of cancellation or suspension pursuant to clause 43(a), the Owner shall be under no liability to the Hirer or its sub-contractors for any loss which they may sustain in consequence of any such cancellation or suspension. The Hirer shall in the event of such cancellation be under no liability to the Owner in respect of its future obligations under the Contract and in the event of suspension of the Contract shall be relieved of such obligations for the period of such suspension including the payment of any part of the hire charge due after such date of suspension (but without prejudice to any rights of either party against the other in respect of any claim accrued to the date of the commencement of such cancellation or suspension).

#### 44. CUSTODY OF PLANT

The Plant is deemed to be in the custody of the Hirer from the earlier of delivery to the Hirer's site or collection from the Owner's depot by the Hirer until the earlier of (i) the end of the period of 72 hours (excluding Saturdays, Sundays and Bank Holidays) subsequent to the time which the Hirer notifies to the Owner to be the time he wishes to terminate the hire of the plant or (ii) such time as the Plant is either collected by or delivered into the custody of the Owner ("the Custody Period"). In Clause 13(b) of the Model Conditions the words "Custody Period" shall replace "Hire Period". In the event of any agreed suspension of hire the Plant will be deemed to remain in the custody of the Hirer and the suspension period shall form part of the Custody Period.

#### 45. INSURANCE

The Hirer shall throughout the Custody Period (without prejudice to any liability of the Hirer to the Owner) at its own expense effect and maintain insurance in relation to the Plant with a reputable insurance company and such insurance will be in an amount equal to full new replacement value of the Plant (including all taxes, duties and other payments incidental to any replacements) and on fully comprehensive terms (including third party liability) against loss or damage from any cause whatsoever, including but without limitation, all risk of third party liability arising out of the transport, presence or use of the Plant.

#### 46. HOURS OPERATED

All rates are conditional on the plant being used for no longer than 40 hours per week. Any hours worked in excess of 40 hours will be charged pro-rata. Site attendance for any reason outside normal working hours will be charged extra.

#### 47. SPECIFIC REGULATIONS

In relation to clause 32 above the Hirer in particular accepts the following:  
Diesel fuel supplied with plant must not be used as road fuel.

#### 48. OPERATING AND CHARGING

##### PNEUMATIC TYRES & TUBES

All damage to TYRES and TUBES is the responsibility of the Hirer and all site repairs must be carried out by the Hirer at no cost to the Owner.

##### LIFTING SLINGS

These will be charged extra as consumables at commencement of hire.

##### OPERATING CONDITIONS

At temperatures below 5 degrees C manufacturers specifications regarding antifreeze must be adhered to.

##### CLEANING

The hirer is responsible for any cleaning charges required at the termination of the hire.

#### 49. HIRERS LIABILITY

Operation of the Plant by the Hirer must be in accordance with the manufacturers specifications, recommendations and instructions (or any of the same, or combination) and any liability arising by virtue of the Hirer's failure to comply with such specifications, instructions and recommendations (or any of the same, or combination) shall be the sole responsibility of the Hirer and the Hirer shall fully indemnify and wholly hold the Owner harmless from any claim made by any person arising directly or indirectly from such failure.

#### 50. TERMINATION OF HIRE

Oral notice of termination of hire shall only be effective if a Finish-of-Hire reference number is obtained from the Owner as confirmation. Please note this on any relevant correspondence.

#### 51. HIRES TO UNINCORPORATED BODIES

If the Hirer is an individual, partnership or other unincorporated body the contract of the hire will terminate not later than three months from the date of its commencement.

#### 52. PAYMENT TERMS

Payment in full is to be received at the Owner's Head Office on or before the last working day of the month following the month date of invoice. No other payment terms shall prevail unless agreed in writing by the Owner. The Owner reserves the right to charge interest at the rate of 2% per month cumulative on all overdue balances until judgement or payment, whichever sooner. Time of payment shall be of the essence.

#### 53. PRICES AND RATES

The Owner reserves the right to make a minimum hire charge and/or to alter prices at any time without notice. Prices and rates quoted on this contract are exclusive of Value Added Tax. Tax will be charged at the appropriate rate on all invoices.

#### 54. SET OFF

- (a) The Owner shall be entitled to set off and retain any sums due to the Hirer against any contingent or actual liabilities of the Hirer to the Owner or any other company within the same group of companies as the Owner.
- (b) The Hirer may not exercise any right of set off, legal or equitable against the Owner whether in respect of any contingent or actual liabilities of the Owner to the Hirer or otherwise.

#### 55. DATA PROTECTION ACT

In accordance with the Data Protection Act 1998 the Hirer consents to:

- (a) The Owner making a search with a credit reference agency, which will keep a record of that search and will share that information with other businesses.
- (b) The Owner, if it wishes, making enquiries about the principal directors with a credit reference agency.
- (c) The Owner monitoring and recording information relating to your trading performance and making such records available to credit reference agencies, who will share that information with other businesses in assessing applications for credit and fraud prevention.
- (d) The Owner monitoring and recording information relating to your trading performance and making such records available to other organisations to assess applications for credit.

#### 56. PROPER LAW

The applicable law to these conditions shall be exclusively the Laws of England and save as provided elsewhere herein, whether in the Special Conditions or Model Conditions, the parties submit themselves exclusively to the jurisdiction of the English Courts.

#### 57. SEVERABILITY

In the event that any clause (or part thereof) of the Special Conditions or Model Conditions is held to be unlawful, unenforceable or invalid by any Court of law or other competent body, the remainder of the provisions of the Special Conditions and the Model Conditions shall continue in full force and effect.

#### 58. NO WAIVER

Failure by the Owner to enforce any provision of the Model Conditions or the Special Conditions shall not be deemed a waiver of future enforcement of that or any other provision.

#### 59. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

An entity which is not expressly a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

#### 60. NO VARIATION

No variation or amendment to the Model Conditions or the Special Conditions shall be valid unless signed in writing by the Owner.