

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

These conditions are not to be used for consumer contracts.

A consumer contract is a contract entered into with a person acting in their own capacity and not for or on behalf of any business or trade entity.

1. DEFINITIONS

- 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.
- The "Hire Period" shall commence when either the Plant leaves the Owner's depot or place where last employed; and shall continue until the Plant is received back at the Owner's named depot or other agreed location. For the avoidance of doubt the Hire Period includes any time the Plant is being transported to or from site; or is left on site during evenings, nights, weekends, or any Holiday Period.
- 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.
- "Holiday Period" covers any cessation of work over Easter, Christmas, and the New Year, as well as any other Bank or Public holidays.
- "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.
- The "Owner" is the Company, firm or person letting the Plant on hire and includes their successors, assignees, or personal representatives.
- "Plant" covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment, accessories, and any ancillary items, welfare units, accommodation, vehicles, or equipment therefor, which the Owner agrees to hire to the Hirer including any personnel, or anything which is supplied by the Owner to effect the hire, and anything supplied by the Owner for the safe operation and routine inspection and maintenance of the Plant.
- 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.
- A "Working Week" covers the period from 8.00 am on Monday to 3.30 pm on Friday, unless otherwise specified in the Contract.

2. EXTENT OF CONTRACT

No terms, conditions, or warranties other than as specifically set forth in the Offer shall be deemed to be incorporated or to form part of the Contract or shall otherwise govern the relationship between the Owner and the Hirer in relation to the hire of any particular Plant pursuant to the Offer. This excludes all other terms or conditions which the Hirer may seek to apply under any order or acknowledgement or acceptance or similar document and supersedes all prior negotiations, representations, or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by the Owner. The Owner and the Hirer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract, except that a person who is a successor to or an assignee of the rights of the Owner is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).

3. ACCEPTANCE OF PLANT

Acceptance of the Plant or any personnel supplied by the Owner on site implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing.

4. UNLOADING AND LOADING

The Hirer shall be responsible for the unobstructed access and egress to the site, and where applicable any access road to the site and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site or on the access road; and any personnel supplied by the Owner for such unloading and/or loading shall be deemed to be under the direction and control of the Hirer. Such personnel shall for all purposes in connection with their employment in the unloading and/or loading of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) who shall be solely responsible for all claims arising in connection with unloading and/or loading of the Plant by, or with the assistance of, such personnel.

5. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

- Unless written notification is received by the Owner within 24 hours from the commencement of the Hire from the Hirer, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Contract and to the Hirer's satisfaction, provided that where the Plant requires to be erected on site, the periods stated above shall be calculated from the date of completed erection of Plant. The Hirer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and/or the Owner's recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted).
- The Hirer shall at all times when hiring Plant without the Owner's operator or driver take all reasonable steps to keep themselves acquainted with the state and condition of the Plant. If such Plant is continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss, cost, expense, or accidents whether directly or indirectly arising therefrom.
- Any inspection report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner, if requested by the Hirer, and returned on completion of the Hire Period.

6. SERVICING AND INSPECTION

The Hirer shall at all reasonable times allow the Owner, the Owner's agents, or insurers to have access to the Plant to inspect, test, adjust, repair, or replace the same. The Hirer shall allow such access during the Working Day. The Owner reserves the right

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

7. GROUND AND SITE CONDITIONS

- The Hirer is deemed to have knowledge of the site, the site's access road, the property or land where the Plant is to be delivered or collected, loaded or unloaded, to work on, travel over, be transported over, be erected or dismantled on is suitable for the use of such Plant, and any electronic interference which may affect the Plant.
- Subject to 7(a), if, in the opinion of the Hirer, the ground (including any private access road or track) is soft or unsuitable for the Plant, then the Hirer shall supply and lay suitable support in a suitable position for the Plant.
- Any suitable support supplied by the Owner is provided solely to assist the Hirer under their duties within clause 7(b) and expressly not to relieve the Hirer of their legal, regulatory, or contractual obligations to ensure adequate stability of the Plant.
- 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

- When a driver or operator or any person is supplied by the Owner with the Plant, the Owner shall supply a person competent in operating the Plant or for such purpose for which the person is supplied and such person shall be under the direction and control of the Hirer. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) and the Hirer shall be solely responsible for all site costs and claims arising in connection with the operation of the Plant by the said drivers/operators/persons.
- The Hirer shall not allow any other person to operate such Plant without the Owner's prior written consent.
- 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

- 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.
- 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.
- The Hirer shall not repair, modify, or alter the Plant without the prior written permission of the Owner (including without limitation the changing or repair of any tyre/puncture). The Hirer is responsible for all costs incurred in the changing or replacement of any tyre (which must be of an equivalent specification) as approved by the Owner and for the repair of any puncture.
- The Hirer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Plant due to the Hirer's negligence, misdirection, or misuse of the Plant, whether by the Hirer or their servants, and for the payment of hire at the idle time rate as defined in clause 25, during the period the Plant is necessarily idle due to such breakdown, unsatisfactory working or damage. The Hirer is responsible for the cost of spares and/or repairs due to theft, loss, or vandalism of the Plant. The Owner will be responsible for the cost of repairs, inclusive of the cost of spares, to the Plant involved in breakdown from all other causes.

10. OTHER STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" (clause 9) or for "Idle Time" (clause 25), as herein provided), for stoppages during causes outside the Owner's control, including but not limited to adverse weather and/or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Hirer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.

11. LOSS OF OTHER PLANT DUE TO BREAKDOWN

Each item of Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

12. LIMITATION OF LIABILITY

Except for liability on the part of the Owner which is expressly provided for in the Contract (including these clauses):

- The Owner shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond the Owner's reasonable

control;

- (b) The Owner shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Hirer's loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and
- (c) whenever the Contract (including these clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Hirer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made.
- (d) For the avoidance of doubt, nothing in these conditions limits or seeks to exclude the Owner's liability for claims of death or personal injury caused by the Owner's negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

- (a) For the avoidance of doubt, it is hereby declared and agreed that nothing in this clause affects the operation of clauses 4, 5, 8 and 9 of these conditions.
- (b) For the duration of the Hire Period (which for the avoidance of doubt includes the time Plant is left on site during a Holiday Period) the Hirer shall, subject to the provisions referred to in sub paragraph (a) be liable for all loss of or damage to the Plant, and shall also fully and completely indemnify the Owner and any personnel supplied by the Owner in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period, and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Plant, hire charges shall be continued at idle time rates as defined in clause 25 until the settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or idle time charges can be reinstated from the date of that agreement. Should idle time charges be re-instated, the agreed settlement figure remains payable in full.
- (c) For the avoidance of doubt, notwithstanding any agreement by the Owner to waive hire charges after any agreed period of use of the Plant, the Hirer's obligations specified under clause 13(b) shall continue for the duration of the Hire Period.
- (d) Notwithstanding the above the Hirer shall not be responsible for damage, loss, or injury, subject to clauses 1(b) and 7:
 - (i) prior to delivery of any Plant to the site (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving such highway) where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner,
 - (ii) during the erection and/or dismantling of any Plant where such Plant requires to be completely physically erected/dismantled on site, provided always that such erection/dismantling is under the exclusive control of the Owner or their agent,
 - (iii) after the Plant has safely been removed from the site, and until it is in transit on a highway maintainable at the public expense (or where the site is not immediately adjacent to a highway maintainable at the public expense including the site's access road, after it has safely joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer)
 - (iv) where the Plant is travelling to or from a site on a highway maintainable at the public expense including the site's access road, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer).

14. NOTICE OF ACCIDENTS

If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Hirer to the Owner by telephone and confirmed in writing to the Owner no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Hirer is not bound to fully indemnify the Owner, no admission of liability, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's prior written permission.

15. RE-HIRING ETC.

Neither the Plant nor any part thereof shall be re-hired, sub-let, or lent to any third party without the prior written permission of the Owner.

16. CHANGE OF SITE

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

17. RETURN OF PLANT FOR REPAIRS

If during the Hire Period the Owner decides that urgent repairs to the Plant are necessary then the Owner may arrange for such repairs to be carried out on site or at any location of the Owner's nomination. In the event that urgent repairs to the Plant are necessary the Owner shall be obliged to replace the Plant with similar Plant if available, the Owner (but without prejudice to any of the provisions of clauses 9 and/or 13) paying all transport charges involved. In the event of the Owner being unable to replace the Plant the Owner shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of clauses 9 and/or 13) by giving written notice to the Hirer. If such termination occurs:

- (a) within three months from the commencement of the Hire Period, the Owner (but without prejudice to any of the provisions of clauses 9 and/or 13) shall pay all transport charges involved, or,
- (b) more than three months from the commencement of the Hire Period, the Owner (but without prejudice to any of the provisions of clauses 9 and/or 13) shall be liable only for the cost of reloading and return transport.

18. BASIS OF CHARGING

- (a) The Hirer shall render to the Owner for each Working Week an accurate statement of the number of hours the Plant has worked each day. When any personnel, operator or driver is supplied by the Owner, the Hirer shall sign their time record sheets. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time records sheets. Where applicable, the Plant's telematics may be checked against the Hirer's statement or operator's signed timesheet, should any conflict arise, then the telematics will take precedence over all other records. (If there is any conflict between the signed timesheet and any other record taken, then the signed timesheet takes precedence.)
- (b) The Hirer shall be charged for any toolbox talks, briefings, inductions, mandatory training which the Owner's personnel have to attend prior to or when working on the Hirer's site.
- (c) Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of driver or operator supplied by the Owner except where breakdown is due to acts or omissions of third parties and/or the Hirer's misuse, misdirection or negligence, subject however to the provisions of clause 8 of these conditions.
- (d) Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.
- (e) Plant shall be hired out either:
 - (i) for a stated minimum number of hours per Working Day or per Working Week or,
 - (ii) without any qualification as to minimum hours. Odd days at the beginning and at the end of the Hire Period shall be charged pro rata.
- (f) Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one stoppage and any excess will be charged for at the appropriate idle time rates.
- (g) In the case of Plant which is required to be dismantled for the purpose of transportation, if the Owner agrees to a modification of the hire charge for the period required for assembling on site and dismantling upon completion of the Hire Period, such modification of the hire charge and the Hire Period for which it shall apply shall be stated in the Offer/Contract.
- (h) The Hirer shall pay the Owner's invoice within 30 days net unless otherwise agreed.
- (i) Any query with the Owner's invoice must be raised in writing by the Hirer within 14 calendar days of receiving the invoice.
- (j) The Owner in their absolute discretion may agree to accept electronic records and data as an alternative to written statements of the number of hours, time record sheets and other information related to charging that the Hirer is required to provide to the Owner. Such electronic records and data may include but is not limited to telematics automatically generated by the plant and electronic log books.

19. PLANT HIRED ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS

The full daily rate will be charged on a daily basis irrespective of the hours worked except in the case of breakdown for which the Owner is responsible, when the actual hours worked will be charged pro rata of the average Working Day. No hire charge shall be made for Saturday and/or Sunday unless at the Hirer's request, the Plant is actually worked or has been delivered to site or is on standby. The Hirer must inform the Owner if the Plant is going to be used at these times.

20. PLANT HIRED BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS

The weekly or monthly rate shall be charged irrespective of the number of hours worked, except in the case of breakdown for which the Owner is responsible when an allowance pro rata of the agreed weekly rate or pro rata of the agreed monthly rate will be made for each full Working Day broken down calculated to the nearest half Working Day.

21. PLANT HIRED BY THE WEEK OR MONTH WITH QUALIFICATION AS TO HOURS

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

22. "ALL-IN" RATES

Where "All-In" rates are charged by agreement the minimum period shall be as defined in the Contract and in accordance with the hire rates and terms contained therein, subject to the provisions of clause 26.

23. PERIOD OF CHARGING

- (a) Within the Hire Period, an allowance may be made of not more than 1 day's hire charge each way for travelling time. If the Plant is used on the day of travelling, full hire rates shall be paid for the period of use on that day. If more than 1 day is properly and unavoidably occupied in transporting the Plant, a hire charge at idle time rates shall be payable for such extra time, provided that where Plant is hired for a total period of less than one Working Week, the full hire rate shall be paid from the date of despatch to the date of return to the Owner's named depot or other agreed location.
- (b) Should the Hirer delay the commencement of the Hire Period for whatever reason, then the Owner reserves the right to charge the Hirer the idle time rate as defined in clause 25 for the intervening period
- (c) If the Plant is not made available for collection as agreed between the parties, such Plant shall be deemed with immediate effect to be placed back on hire. The Hirer shall be responsible for the safekeeping of the Plant in accordance with clause 13, and for all the reasonable costs and expenses incurred by the Owner in seeking to collect such Plant.
- (d) Upon the completion of the Hire Period, the Hirer shall clean and where necessary, decontaminate the Plant. All fuel and contaminants will be removed from bunds, storage tanks and 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 intended duration of the hire of the Plant is indeterminate or having been defined becomes indeterminate the Contract shall be terminable by 7 working 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 working 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 working 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 working days' notice, the Hirer's obligations under clause 13 shall continue for a further 3 working 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.
- d) Should the Hirer terminate the Contract once the Hire Period has commenced, the Owner reserves the right to charge the Hirer the balance of the Contract. Where the Hire Period has not commenced but insufficient notice of cancellation is provided by the Hirer to allow the Owner to mitigate the effects of late cancellation, the Owner reserves the right (at its absolute discretion) to charge the Hirer the full balance of the charges for the Hire Period.
- e) The Hirer may off-hire the Plant by written notification via an electronic device or application (app.). This off-hire will only be accepted by the Owner, provided the Owner issues an off-hire confirmation to the Hirer.

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(f). 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 their home may 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 POWER

- (a) Fuel, fuel additives or power shall when supplied by the Hirer and where instructed or specified by the Owner, be of a grade and type specified. The Hirer shall be solely responsible for all damages, losses, costs, and expenses incurred by the Owner if the Hirer fails to supply, maintain, or use the wrong/contaminated fuel, fuel additives or power rating. Fuel, fuel additives or power when supplied by the Owner, to be charged at an agreed cost.
- (b) If the Plant requires an electrical supply to either safely operate or recharge, then the Hirer will be responsible for the cost of providing the correct electrical supply, which will be available prior to the Plant's delivery, and continue until the Plant has left the site. The Hirer shall ensure that all current Health and Safety and other applicable legislation and industry guidance is complied with including fitting, testing and inspection of the supply. The Hirer will indemnify the Owner against any and all damages, losses, or claims should the Hirer fail to do so.

29. SHARPENING OF DRILLS/STEELS ETC.

The cost of re-sharpening or replacement of drill bits, blades, bucket teeth 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 the Hirer's 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 all relevant legislation, regulations, instructions, or guidance issued by the Government, Government Agencies, Local Authorities, statutory regulators, and Public/Corporate Bodies established by Parliament/Government including (without limitation) regulations under the Bribery Act, the Civil Aviation Act, the Construction (Design and Management) Regulations, the Environmental Acts, Factories Acts, the General Data Protection Regulation (GDPR), the 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) For the avoidance of doubt, the Hirer shall indemnify the Owner against any and all charges, fines, or losses that the Owner may become liable for as a result of the Hirer utilising the Plant during the Hire Period.

33. PROTECTION OF OWNER'S RIGHTS

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.

34. TERMINATION AND SUSPENSION

- (a) 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 and fails to remedy such default within 10 working days or such other period as might be considered reasonable under the circumstances upon receiving written notice requiring it to do so;
 - (ii) The Hirer fails to observe and perform the terms and conditions of the Contract and fails to remedy such default within 10 working days of receiving written notice requiring it to do so;
 - (iii) The Hirer suffers, or the Owner reasonably believes that the Hirer shall suffer, any distress or execution to be levied against them;
 - (iv) The Hirer makes or proposes to make any arrangement with their 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.
- (b) In the event of termination under sub-paragraph (a) above:
 - (i) The Hirer must give the Owner or the Owner's 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.
- (c) The rights under sub-paragraph (a) and (b) 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.
- (d) 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 working 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.

35. 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(d) and (e), 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.

36. DISPUTE RESOLUTION

- (a) The Owner will determine which court will have exclusive jurisdiction and interpretation of the law for this Contract be it governed by the country where the Owner's Head Office or site 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 such equivalent legislation which confers on the parties the statutory right to adjudicate within the relevant jurisdiction (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.

37. 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.

38. 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 HOISTS 2021

TO BE READ IN CONJUNCTION WITH THE CPA MODEL CONDITIONS FOR THE HIRING OF PLANT (2021)

EXPLANATORY NOTE: The purpose of these Supplementary Conditions is, both partly, to raise awareness of the Hirer's responsibilities for the Safe Use of Hoists and partly to define contractually the extent of the Owner's and Hirer's responsibilities as between themselves.

For the avoidance of doubt, when the hire is subject to the CPA's Model Conditions for the Hiring of Plant 2021 ("CPA Model Conditions"), the Owner is not a specialist sub-contractor and/or sub-contractor of the Hirer. The Owner will supply Plant pursuant to the CPA Model Conditions together with these Supplementary Conditions to form the Contract between the Owner and the Hirer.

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 These Supplementary Conditions are applicable to Hoists and Transport Platforms only and shall be referred to as "hoists" in the "Supplementary Conditions".
- 1.2 Unless the context suggests otherwise words and terms in the Supplementary Conditions shall have the same meaning as in the CPA Model Conditions.
- 1.3 If any conflict shall appear between any provisions of the Supplementary Conditions and the provisions of the CPA Model Conditions then the former shall prevail.

RESPONSIBILITIES OF THE HIRER

2. MANAGEMENT

- 2.1 In order to comply with the requirements of legislation, which includes the Management of Health and Safety at Work Regulations 1999 (SI 1999 No. 3242); the Provision and Use of Work Equipment Regulations 1998 (SI 1998 No. 2306) and the Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998 No. 2307), furthermore, to follow the guidelines established under the 'Inspection, Thorough Examination and Maintenance' Best Practice Guide, the Hirer has overall responsibility for the management and use of the hoist(s). The Hirer will be responsible for provision of emergency rescue of personnel from the hoist in accordance with industry Good Practice.
- 2.2 If advice or information is sought from and given by any person supplied by the Owner, the Hirer understands and accepts that such advice or information is given without responsibility and does not relieve or reduce the Hirer's requirement to make their own independent assessment as outlined above.
- 2.3 The Hirer is responsible for providing at their own cost a competent hoist operative who may be responsible for the daily/weekly checks to the hoist and also for providing an appointed person to arrange to remedy any defects and to retain records and to comply with all Health and Safety and other applicable legislation and regulations at all times.
- 2.4 The Hirer is responsible for using the Plant in the manner prescribed in the hoist manufacturer's manual.
- 2.5 The hoist(s) shall not be modified or have additional equipment fitted to it without the express written permission of the Owner.
- 2.6 The Hirer must inform the Owner in writing if the hoist is going to be used in any way other than in accordance with the scope of the Reported Thorough Examination and other than in accordance with the manufacturer's operating instructions.
- 2.7 The Hirer must inform the Owner in writing if the Hirer is carrying out any third-party inspections or operator training, copies will be given to the Owner as well.

3. EXCLUSION ZONES

- 3.1 The Hirer should receive written confirmation of the exclusion zone from the Owner, within a reasonable period prior to the hoist being erected, serviced, examined, adjusted, modified or dismantled. For the avoidance of doubt, the exclusion zone

may extend beyond the boundary of the site and include any relevant airspace. Such exclusion zone remains the responsibility of the Hirer.

- 3.2 The Hirer will create and maintain an exclusion zone (including any relevant airspace) at no cost to the Owner, whilst the hoist is either being erected, serviced, examined, adjusted, modified or dismantled. During this time, the Hirer will be solely responsible for preventing any unauthorised personnel from entering the exclusion zone. Should the Hirer fail to comply with this requirement, the Hirer will be solely liable for any loss or damage or injury to persons or property and to costs sustained by the Owner as a result of suspension of works arising from the failure to maintain the area.

4. POWER SUPPLY

- 4.1 If an electric hoist is required, the Hirer will be responsible for the cost in providing the correct power supply for the type of hoist being hired to the base of the hoist or close by, prior to the arrival of the hoist. The power supply will remain available until the hoist has been completely dismantled.
- 4.2 At the Hirer's cost, the Hirer will arrange the power supply will terminate in a suitably sized electrical isolator switch (EIS) that is capable of being padlocked in the off position and will be in close proximity to the base of the hoist to prevent unauthorised or inadvertent use when the hoist is out of service. This power supply will remain available until the hoist has been completely dismantled.
- 4.3 The Hirer will be responsible for connecting the power supply to the hoist and testing it. When the hoist is not in use, the Hirer will ensure that the power supply is properly isolated, except when an ancillary power supply is needed for the hoist at all other times. The Hirer will be responsible for disconnecting the power supply at the end of the Hire Period once the hoist has been completely dismantled.

5. GROUND AND SITE CONDITIONS, BASES AND TIES

Without prejudice to Clause 7 of the CPA Model Conditions:

- 5.1 The Hirer shall be fully liable to the Owner for any damage to the hoist or any Plant required for the erection, servicing, adjusting, modifying and dismantling of the hoist or any associated equipment for the hoist caused by ground and site conditions and shall indemnify the Owner and hold the Owner harmless against any liability, expense, loss or damage caused by ground and/or site conditions.
- 5.2 The Owner will provide sufficient written technical information that will allow the Hirer to prepare a suitable base/foundation which may include embedment frames/sockets, and where applicable, the mast-ties fixing points back to the structure, that can withstand all of the forces the hoist exerts in all configurations and circumstances.
- 5.3 The Hirer will confirm in writing that the base/foundation is compliant with the written technical information by the Owner, and with all current legislation, Approved Code of Practice (ACOP) and industry good practice, including but not limited to BS 5975. The Hirer will indemnify the Owner should the Hirer not comply with this requirement and will also be liable for all hire charges and/or costs that would apply if this non-compliance had not arisen.
- 5.4 The Hirer will ensure that any structure (temporary or permanent works) to which the hoist will be mounted or attached can withstand all of the forces applied from the operation and testing of the hoist in the hired/agreed configurations and in all circumstances. The Hirer will be responsible for any damage caused to the structure as a result of any use of the hoist.
- 5.5 The Hirer shall ensure that the base of the hoist is kept free of surface water, which may require the installation of surface water drains or pumped systems. Where any part of the hoist is below the ground's surface, the Hirer at their own cost will install and maintain a pump system to keep the area free of water. The Hirer will be liable for any damage as per clause 13 of the Model Conditions if the Hirer fails to comply.

6. ERECTION, MODIFICATION AND DISMANTLING

- 6.1 The Hirer must give a minimum of four week's (28 calendar days') notice, unless

otherwise agreed by the Owner, of the dates upon which the Owner will erect, or modify, or dismantle the hoist.

- 6.2 Insofar as the Hirer's use of the hoist will require any licence, permission or authorisation which may include but not limited to 'oversailing', from any private or public body or government or Local Authority or the giving of notice for any such licence, permission or authorisation, the giving of any such notice shall be the entire responsibility of the Hirer, who must ensure that sufficient notice is given to the Owner to guarantee compliance with the relevant regulations. This responsibility extends to ensure that the site is kept clear of all obstructions and that if required, traffic management arrangements are set up and operated correctly. Where the Owner is required to obtain a licence, permission or authorisation to supply traffic management on the Hirer's behalf the Hirer shall indemnify the Owner against any costs and/or expenses incurred by the Owner in doing so.
- 6.3 If the hoist is to be secured to a structure, then the Hirer must obtain permission to attach to the structure prior to the hoist arriving on site, so as to secure the hoist into position. Any damage caused to the structure will be the responsibility of the Hirer.
- 6.4 The Hirer will ensure that the structure to which the hoist will be attached can withstand the forces imparted from the operation and testing of the hoist. The Hirer will be responsible for any damage caused to the structure as a result of any use of the hoist.
- 6.5 The Hirer will clear all debris and site rubbish from the hoist platform and equipment prior to any modification or dismantling of the hoist, as per the Owner's Risk Assessment/Method Statement. Any reasonable cost incurred by the Owner due to the default of the Hirer in failing to clear all debris and site rubbish will be chargeable to the Hirer.
- 6.6 The Hirer will provide without charge to the Owner, a suitable working area which will be subject to clause 3 (Exclusion Zones), where the hoist can be erected, tested, commissioned, modified, adjusted, moved, and includes during re-testing, in-service inspections or Thorough Examination(s), for the duration of the Contract.
- 6.7 The Owner will charge the Hirer for any time spent erecting, dismantling, modifying, adjusting, or moving the hoist including re-testing at the rate specified in the Contract or if no rate is specified, at a fair and reasonable rate. The Hirer shall also allow the Owner, or any representative of the Owner, free and unrestricted access to the hoist and any associated Plant and to all areas of their operation. The Owner reserves the right to recover the costs of inspecting and maintaining the hoist if access can not be provided on weekdays during normal working hours as defined in clause 1(h) of the CPA Model Conditions.
- 6.8 The hire charge will begin from the date of delivery unless otherwise agreed in writing by the Owner prior to delivery; and will continue daily until the hoist has been completely dismantled and removed from site.
- 6.9 The Hirer will not attempt to adjust or modify the hoist or the attachments thereto without the express written permission of the Owner. If there is a need for the Owner's representative to ensure safe adjustment, modification or movement of the hoist, any reasonable costs incurred by the Owner will be charged to the Hirer.
- 6.10 Any additional duties which the Hirer requires the Owner to perform which may include, but not be limited to the drafting of Lift Plans, Temporary Works Drawings, calculations, site visits, may be charged to the Hirer.
- 6.11 Any costs incurred by the Owner as a result of delays or cancellation by any cause beyond the Owner's reasonable control including but not limited to adverse weather, aborted road closures, ground conditions, route to/from as well as access/egress in the planned area of operations, or industrial action on site during the erection, modification, or dismantling of the hoist and associated equipment will be charged in full to the Hirer. Where applicable, clause 23(b) of the CPA Model Conditions will also take effect.
- 6.12 Subject to Clause 25 of the CPA Model Conditions, the Hirer shall be liable to the Owner for the agreed fees and charges regardless of any change in the Hirer's

circumstances or the circumstances affecting the use to which the Hirer intends or intended to put the hoist to and any decision to accept a cancellation or variation of the Contract in any respect shall be at the Owner's full and entire discretion.

7. LIGHTNING PROTECTION

It is the responsibility of the Hirer to ensure that the hoist is provided with an adequate conducting path to earth, in accordance with BS EN 62305 and any subsequent amendments. The Hirer is responsible for carrying out the 'continuity test'. The Hirer will be liable for any damage as per clause 13 of the Model Conditions.

8. SUPPLY OF ALTERNATIVE HOIST

In the event that the Contract specifies a particular type of hoist, the Owner reserves the right to supply a suitable alternative hoist to that specified subject to prior written acceptance by the Hirer, and the Owner shall have no liability to the Hirer for any additional costs in respect of that variation.

9. PROVISION OF HOIST ACCESSORIES

If requested and specified by the Hirer in advance, the hoist will be provided with specific certified accessories, subject to availability and at additional cost. The Owner accepts no responsibility for any costs, losses or expenses incurred or delay caused should the accessories prove unsuitable.

10. SCAFFOLDING

- 10.1 If the hoist is to be tied to scaffold (which must be constructed in compliance with BS EN 12811-1:2003 and with a suitable design criteria to accommodate load factors as applied by this hoist) the Hirer is to supply all tubes and fittings required for the installation of landing gates, tie assemblies, and the base surround, unless otherwise expressly stated by the Owner.
- 10.2 The Hirer will supply a competent scaffolder, free of any charge to the Owner, to assist with the installation of mast tie assemblies, landing gates and any interfacing together with any associated Health and Safety equipment used near or on the hoist.
- 10.3 If special ties are required by the Hirer (over and above the standard ties provided) these will be charged for by the Owner.
- 10.4 Whilst the scaffolding is being progressively dismantled, the scaffolding must not be removed below any hoist tie. The Hirer will be held liable for all costs incurred by the Owner if this requirement is breached.

11. MINIMUM HIRE PERIOD

The Hirer will hire the hoist for the minimum period as stated on the Contract. The Owner reserves the right (at its absolute discretion) to charge the Hirer up to the balance of the Contract, should the hire be terminated earlier than contractually agreed. Any changes levied will be subject to the duty to mitigate.

12. EXTENDING THE HIRE PERIOD

- 12.1 The Owner shall consider any written request from the Hirer to extend the Hire Period in the Contract. Should the Owner decline the Hirer's request, then the Owner shall not be liable for any of the Hirer's losses as stipulated in clause 12(b) of the Model Conditions.
- 12.2 Any extension of the Hire Period beyond the Minimum Hire Period or previously agreed Hire Period is subject to renegotiation of the Offer between the Owner and Hirer, unless otherwise explicitly agreed in writing by the Owner.
- 12.3 The Hirer is responsible for ensuring that any and all permits, which may include but are not limited to those within clause 6.2, are renewed for the extended Hire Period, and at the Hirer's cost.

13. HOLIDAY PERIODS

It is the responsibility of the Hirer to ensure the safekeeping of all Plant hired which is not returned to the Owner before the start of any Holiday Period. This Plant will be deemed to be in use during the Holiday Period and will be charged in accordance with the terms of the Contract.

14. INSURANCE

The Hirer shall have adequate insurance to comply with its liabilities under the Contract. The Owner reserves the right at any reasonable time to require confirmation and evidence that the Hirer is complying with its insurance obligations.

RESPONSIBILITIES OF THE OWNER

15. LIMITATIONS OF LIABILITY

Without prejudice to the terms of Clause 12 of the CPA Model Conditions, the Owner shall have no liability to the Hirer in respect of any damage, including but not limited, to:

- 15.1 any goods or other items being moved by the hoist,
- 15.2 any surface or subsurface features such as underground services,
- 15.3 any above ground structures, including any overhead cables, overhanging, or protruding things, which might result from the travelling, positioning or working of the hoist or any associated equipment,
- 15.4 any delays in erecting, testing, commissioning, modifying, adjusting, repositioning, or dismantling the hoist due to adverse weather conditions, including during re-testing, in-service inspections and Thorough Examinations nor the effect this has on their or their client(s) work schedules.

16. OPERATING INSTRUCTIONS

The Owner will ensure that the Hirer receives operating instructions for the type of hoist being supplied.