



## Uniflare Ltd

### CONDITIONS OF BUSINESS

#### **1. General Applicability**

Unless otherwise expressly agreed by the Company in writing, these Conditions shall apply to all contracts for the supply of goods, equipment and/or services entered into by the Company and no servant or agent shall have the power to alter or in any way vary these Conditions. Any attempt by any purchaser to vary these Conditions or to substitute alternative Conditions whether in writing or otherwise shall be of no effect.

#### **2. Acceptance of order**

All quotations given by the Company are made in good faith. Any order received by the Company whether pursuant to quotation or otherwise and whether verbal or in writing shall be deemed to be an offer to contract. No valid and binding contract shall be affected until the Company shall have despatched its written acceptance of the order to the purchaser.

#### **3. Quotations**

All quotations are made subject to the availability of materials. Quotations are submitted on the condition that if a purchaser makes an order pursuant to such quotation all necessary licences, permissions and consents required in relation to the execution of the contract work shall be obtained at the instigation and cost of the purchaser.

#### **4. Prices**

(1) All prices stated in any quotation or contract are based on rates, costs and conditions of labour, costs of materials, fuel and transport obtaining at the date of quotation or acceptance of order (whichever is the earlier). Unless otherwise specifically agreed in writing by the Company, prices may be subject to alteration at the date of despatch of the goods from the Company's works if there has been an alteration in such direct costs to the Company.

(2) Unless otherwise expressly stated, all prices quoted are exclusive of Value Added Tax and any other tax or duty relating to the performance of the contract and do not include transport or handling costs. All goods are sold 'ex-works' unless otherwise stated.

(3) If the Company agrees to deliver goods to the purchaser's order then: (a) unless otherwise agreed all costs of carriage and/or insurance and/or freight shall be for the account of the purchaser; (b) the Company reserves the right to make arrangements in respect of delivery but shall not be liable for any delay in delivery due to a cause beyond its control.

(4) Orders placed with the Company for goods will be subject to a minimum charge of £5.00 net value excluding V.A.T. and delivery charge.

#### **5. Suitability for purpose**

It shall be the purchaser's responsibility to assess the suitability of the goods for the purpose, for which they are to be used, and no guarantee or representation is given or to be implied as to the suitability of the goods for any particular purpose, even when the goods are manufactured to the purchaser's special instructions.

#### **6. Cancellation**

In the event of cancellation of the whole or any part of any order the purchaser shall pay such charges as the Company deems necessary to recover its costs and expenses incurred. Goods manufactured to order shall be paid for in full.

#### **7. Terms of payment**

(1) Unless otherwise stated, all prices are net and shall not be subject to any discount. Subject to purchaser's credit being approved by the Company, accounts are due for payment not later than strictly 30 days from date of invoice. In all other cases payment must be received by the Company prior to despatch. (2) Where deliveries of goods are spread over a period, each consignment will be invoiced or despatched as a separate item and each month's invoices will be treated as a separate account and be payable accordingly.

(3) If and so long as the purchaser is in arrears with any payments due hereunder or where there are genuine doubts as to the purchaser's ability to meet his financial commitment under a contract, the Company may without liability suspend further deliveries of goods and/or performance of work both on the same order and on any other order for the same purchaser until such time as payment is made or satisfactory security for payment has been provided without prejudice to any other rights which the Company may have. The Company also reserves the right to charge interest on overdue accounts at the rate of 5% over the Base Lending Rate of LloydsTSB Ltd from time to time in force.

#### **8. Delivery Dates**

(1) All delivery dates quoted or specified in the Contract are estimated only and unless otherwise agreed by the Company in writing, time shall not be of essence of the contract. Lead times shall be computed from the date of the Company's acceptance of order. (2) The Company shall not be liable in any circumstances for delay caused by the purchaser in giving detailed instructions on approval of drawings, diagrams or specifications or by variations requested by the purchaser or by delays on the part of third parties supplying goods and/or materials to the Company (whether or not nominated by the purchaser). (3) The Company will make every reasonable endeavour to supply goods at any times or dates agreed, which times or dates will be estimates only calculated on existing and material supply availability, but will not accept cancellation or be liable for any loss or claim alleged to have arisen from any delay whatsoever caused.

#### **9. Delivery**

(1) Save where stated to the contrary, delivery of goods shall be 'ex-works'. (2) Where the Company agrees to arrange for delivery elsewhere using a carrier or other third party for the purposes of delivery then unless the Company agrees otherwise in writing:- (a) where goods are sold F.O.B. the Company's responsibility shall cease when the goods are placed on board ship without the need to give notice to the purchaser and the provisions of Section 32 of the Sale of Goods Act 1979 shall not apply; (b) in other cases, the Company's responsibility shall cease when the goods are put in charge of the carrier. (3) Where goods are delivered by the Company transport it is done so on the understanding that the delivery point is on hard roads and that the purchaser is responsible for off-loading and storage thereof. (4) The Company and its servants and all persons authorised by the Company shall at all times have full and free access to the land and premises of the purchaser by routes convenient to the Company and uninterrupted occupation thereof for the purpose of delivering the goods and carrying out any works related thereto with or without vehicles of all descriptions unless otherwise specifically agreed in writing. If in the event of access to the site being unsuitable or the purchaser's labour not being available to unload the goods, the goods will be returned to the Company's works and hauling and handling costs will be charged for. (5) The purchaser must provide his own labour for assisting with unloading the goods and must arrange to unload the goods and release the Company's vehicle expeditiously. A charge may be made for any excessive waiting time. Any loss damage or delay occasioned on or after unloading shall be the responsibility of the purchaser, even if the Company's driver provides assistance. (6) No claim for defective goods will be entertained unless written notice is given to the Company within 7 days of delivery, followed by a full claim in writing within 7 days thereafter. All goods in respect of which a claim is made must be preserved intact as delivered for inspection by the Company. The Company's liability in respect of such claims shall be limited to free replacement, or at the option of the Company, to refund of purchase price. No claim shall be entertained in respect of work done by the purchaser or for any loss damage or expense whatsoever arising directly or indirectly from such defects.

#### **10. Force Majeure**

The Company shall be under no liability if it is unable to carry out any provision of any contract (including delays in delivery) for any reason beyond its control including without prejudice to the generality of the foregoing Act of God, fire inclement or exceptional weather conditions, official or unofficial industrial action (whether at the Company's premises or elsewhere), hostilities, shortage of labour, materials, power or other supplies, governmental order of intervention (whether or not having the force of law) or any other cause whatever beyond the Company's control or of an unexpected or exceptional nature.

#### **11. Warranty: Limit of Responsibility**

(1) The Company warrants in relation to goods of its own manufacture that it will (at its own discretion) either repair or replace, or refund the full purchase price for any goods which are found within a period of 12 months from the date of despatch of such goods from the Company's works ("the warranty period") to be defective or not in accordance with the contract or any express description or representation given or made on behalf of the Company in respect of such goods. (2) The Company warrants in relation to goods not of the Company's manufacture (including but not limited to parts and components supplied by others for goods manufactured by the Company) that it will so far as it is able to do so give the purchaser the benefit of any express guarantee or warranty by the manufacturer or supplier of such goods and of any other rights which the Company has against the manufacturer or supplier in respect thereof. (3) The purchaser's remedies in respect of any claim under the foregoing express warranty or against any manufacturer or supplier as aforesaid or any claim under any condition or warranty implied by law or any other claim in respect of the goods or any workmanship in relation thereto whether or not involving negligence on the part of the Company shall in relation to goods of the Company's manufacture be limited to repair, replacement or refund of the purchase price as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the warranty period and in all other cases be limited to the enforcement of the above mentioned liabilities of the manufacturer or supplier. (4) The Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. (5) In particular (without prejudice to paragraph (4) of this condition) the Company shall not be liable for any costs of dismantling or re-

assembling any structure of equipment to remove any goods alleged to be defective or not in accordance with the contract or any description or representation as aforesaid or for any other removal costs or for any transport costs in relation to such goods. (6) The foregoing rights of the purchaser shall only be enforceable where it is shown that the goods have been abused or subjected to excessive use, have not been used, installed or stored otherwise than in accordance with the Company's or any Suppliers or manufacturers instructions or recommendations and have been properly tested in accordance with any such instructions or recommendations, have not been used or installed otherwise than in accordance with good engineering principles or recognised standards and have not been used in unsuitable environment or application. (7) A claim in relation to any goods in accordance with any of the foregoing provisions will not entitle a purchaser to cancel the contract or any part thereof or to refuse to take delivery of or pay for goods or any other goods (whether under the same or any other contract).

#### **12. Loss or Damage in Transit**

The risk in the goods passes to the purchaser when the goods are despatched from the Company's works and the Company accepts no responsibility for any damage, shortage or loss in transit. Claims for any damage, shortage or loss in transit should be made on the carrier, and any condition imposed by the carrier in relation to claims for damage, shortage or loss in transit should be complied with. Claims for damage, shortage or loss in transit where the Company's own transport has been used must be made in writing within 48 hours of goods being received by the purchaser.

#### **13. Title to Goods**

(1) The goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the purchaser shall have paid the Company the agreed price together with the full price of any other goods the subject of any other contract with the Company. Until all outstanding payments have been made, the purchaser acknowledges that he is in possession of the goods solely as a fiduciary for the Company. (2) The Company may for the purpose of recovery of its goods enter upon any premises where they are stored or kept or where they are reasonably thought to be stored or kept and may repossess the same and sever the goods from anything they are attached to without being responsible for any damage caused. Until such time as the purchaser becomes the owner of the goods, he will store them on his premises separately from his own goods or those of any person, and in a manner which makes them readily identifiable as the goods of the Company. Such repossession shall be without prejudice to the obligations of the purchaser to purchase the goods. (3) The purchaser is licensed by the Company to agree to sell on the goods, subject to the express condition that the entire proceeds thereof are held in trust for the Company and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's monies. (4) If goods of the property of the Company are admixed with goods of the property of the intending purchaser or are processed with or incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Company. If goods of the property of the Company are admixed with goods of the property of any person other than the intending purchaser, or are processed with or incorporated therein, the produce thereof shall become or be deemed to be owned in common with that other person.

#### **14. Risk**

(1) The goods shall be at the risk of the purchaser from the first delivery of the goods to the purchaser or to any agent, employee or representative of the purchaser notwithstanding any subsequent return or retaking or possession by the Company. (2) Whilst the goods are in the possession of the purchaser before the property in the goods has passed to the purchaser, the purchaser shall at his own expense keep the goods in the same condition as that in which they were delivered and make good any damage or deterioration. (3) Section 32(3) of the Sale of Goods Act 1979 shall not apply to any agreement to which this Clause is incorporated.

#### **15. Defaults**

If the purchaser shall default in or commit any breach of any of its obligations to the Company, or if any distress or execution shall be levied upon the purchaser or if the purchaser shall enter into any negotiations, arrangements or composition with its creditors, or commit any act of bankruptcy, or if any petition in bankruptcy shall be presented against it, or if the purchaser is a corporate body, any resolution is proposed or presented to wind up the purchaser, or if a receiver of the purchaser's assets or undertakings or any part thereof shall be appointed, the Company shall be entitled to determine forthwith any agreement then subsisting without prejudice to any other claim or right the purchaser may make or exercise.

#### **16. Patents**

The purchaser shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the purchaser's instructions whether expressed or implied.

#### **17. Non Standard and Special Orders**

Where a purchaser orders goods or materials of a type, size or quality not produced by the Company in the ordinary course of its business, the Company will use all reasonable endeavours to execute the order. If it subsequently proves impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the incomplete balance thereof, in which event the purchaser will only be liable to pay for such part of the contract as has been performed. The purchaser will be responsible for costs of materials and labour incurred by cancellations, or design changes, once the order has been accepted.

#### **18. Return of Goods**

Goods designated as standard stock by the Company will at the Company's discretion be accepted for return to stock subject to being in appropriate condition and to a minimum handling charge of 27% provided always that such goods were originally purchased from the Company and that prior notice of intention to return is given. In such cases the purchaser shall be obliged to provide full details of supply date and associated documentation. In all cases the Company reserves the right to refuse to re-purchase goods.

**19. Applicable Law** All contracts to which these Conditions shall apply shall in all respects be governed by and construed in accordance with the Laws of England and the purchaser hereby agrees to submit to the non-exclusive jurisdiction of the English Courts.

General terms - Plant and equipment hire. Our terms are strictly net - receipt of payment being required by the end of the month following date of invoice

2. We shall be pleased to open a credit account on provision of satisfactory bank references etc.

3. All hire rates exclude VAT which is an additional charge

5. The clearing of any plant returned will be charged at cost

6. Our terms and conditions of hire are shown on the reverse of our "Hire Agreement" - a copy of which is available on request

7. Unless otherwise agreed in writing the Hirer is responsible for insuring against liabilities as set out in the "Hire Agreement"

8. All plant offered at a weekly rate is based on a 7 day week

9. Damage is chargeable to the Hire's account - fair wear and tear excepted.
10. Missing items are charged at full replacement cost and the Hire will be responsible at 23rd's rate until the account is settled
11. The Hire is responsible for all fuels - water - grease - oils
12. Transport to and from site is chargeable as an extra
13. All Hire rates and minimum periods of hire are subject to alteration without prior notice

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## 1. DEFINITIONS

- (a) The "Owner" is the Company, firm or person letting the plant on hire and includes their successors, assigns or personal representatives.
- (b) The "Hire" 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 Hire.
- (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 Hire 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 Hire 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 Hire. 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 Hire (but without prejudice to any of the provisions of Clause 13) who also 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 Hire in the case of plant supplied with an operator within four working days, and in the case of plant supplied without an operator within three working days, of the plant being delivered to the site, the plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Contract and to the Hire'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 Hire 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 Hire 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 Hire 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 Hire and returned on completion of hire.

## 6. SERVICING AND INSPECTION

The Hire 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 Hire.

## 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 Hire shall supply and lay suitable timbers or equivalents 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 Hire 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 Hire. 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 Hire (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 Hire 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 Hire 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 Hire shall not, except for the changing of any tyre and repair of punctures, repair the plant without the written authority of the Owner. The changing of any tyre and repair of punctures are however the responsibility of the Hire who should arrange for them to be changed/repaired without awaiting authorisation from the Owner. The Hire is responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture.
- (d) The Hire shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner due to the Hire's negligence, misdirection or misuse of the plant, whether by the Hire 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 Hire 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 Hire 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 of whatever nature due to or arising through any cause beyond his reasonable control.
- (b) The Owner shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Hire'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 Hire'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 Hire 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 Hire 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 Hire is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hire 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 Hire. 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 Hire 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 Hire shall sign the employee's Time Record Sheets. The signature of the Hire's representative shall bind the Hire 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 the Hire'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) 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 QUALIFICATION AS TO HOURS

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

## 21. PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 39 HOURS

## PER WEEK

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 25.

## 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 be used on day of travelling, full hire rates 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 19 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 shall 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.

## 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 make 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 release 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 judgment and enforcement (and/or, under Scots law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions, in each case, without any defence, set-off, counterclaim, abatement or deduction. Where, under Scots law, the Owner, the Hirer, or the adjudicator, wishes to register a decision of the adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness

## 36 IMPORTANT

(a) You are responsible in full for your own negligence on the part of your employees or other users of our equipment, including vandalism.

(b) Non operated equipment hired from us is to be operated at all times in accordance with the manufacturers guidelines and any British Standards applicable

(c) We do not accept responsibility for damage to any part attached to our goods that have not been agreed in writing beforehand

(d) We do not accept liability for consequential loss however caused or losses that arise in any circumstances beyond our control