

# Southdown Engineers Ltd – Hire Division – Terms & Conditions as of 12/12/2007

## 1. DEFINITIONS

- (a) The "Owner" is the Company, firm or person letting the plant on hire and includes their successors, assignees or personal representatives.
- (b) The "Hirer" is the Company, firm, person, Corporation or public authority taking the owners plant on hire and includes their successors or personal representatives.
- (c) "Plant" covers all classes of plant, machinery, vehicles, equipment and accessories therefore, which the Owner agrees to hire to the hirer.
- (d) A "day" shall be 8 hours or if the day is 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 Owners named depot or location.
- (g) A "Consumer Contract" is a contract entered into with a person

## 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 owner and the Hirer in relation to the hire of any particular plant pursuant to the Offer and Acceptance. The Contract does not create any right enforceable by or purport to confer any benefit on any person not a party to it except that a person who is a successor to or an assignee of the rights of the Owner is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).

## 3. ACCEPTANCE OF PLANT

Acceptance of the plant on site implies acceptance of all terms and conditions herein unless otherwise agreed in writing.

## 4 UNLOADING AND LOADING

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

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

- (a) Unless notification in writing to the contrary is received by the Owner from the hirer in the case of plant supplied with an operator within four working days, and in the case of plant supplied without an operator within three working days, of the plant being delivered to the site, the plant shall be deemed to be in good working order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with the terms of the Contract and to the Hirers satisfaction provided that where plant requires to be erected on site, the periods above stated shall be calculated from the day of completed erection of plant. The hirer shall be responsible for its safe keeping, use in a workman like manner within the manufacturers rated capacity and return on the completion of the hire in equal good order (fair wear and tear excepted).
- (b) The Hirer shall when hiring plant without Owners operator or Driver take all reasonable steps to keep himself acquainted with the state and condition of the plant. If such plant be continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising there from.
- (c) The current Inspection Report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner if requested by the Hirer and returned on completion of hire.

## 6. SERVICING AND INSPECTION

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

## 7. TIMBER MATS OR EQUIVALENT

- (a) If the ground (including any private access road or track) is soft or unsuitable for the plant to work on or travel, or be transported over without timbers or equivalents the Hirer 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 the use with outriggers/ stabilisers is provided solely to assist the Hirer and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the lifting equipment under the imposed loading.

## 8 HANDLING OF PLANT

When the 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 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 servant or agents of the Hirer (but without prejudice to any of the provisions of Clause 13) who also shall be responsible for all claims arising in connection with the operation of the plant by the said drivers/operators/persons. The Hirer shall not allow any other person to operate such plant without the Owners previous consent to be confirmed in writing.

## 9. BREAKDOWN, REPAIRS, AND ADJUSTMENTS

- (a) When the plant is hired without the Owners driver or operator any breakdown or the unsatisfactory working of any part of the plant must be notified immediately to the Owner. Any claim for breakdown time will only be considered from the time and date of notification.
- (b) Full allowance for the hire charges and for the reasonable cost of repairs that have been authorised by the Owner will be made to the Hirer for any stoppage due to breakdown of plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of contract.
- (c) The Hirer shall not, except for the changing of any tyre and repair of punctures, repair the plant without written authority of the Owner. The changing of any tyre and repair of punctures, are however the responsibility of the Hirer who should arrange for them to be changed/ repaired without awaiting authorisation from the Owner. The Hirer is responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture.
- (d) The Hirer shall be responsible for all expense involved arising from the breakdown and all loss or damage by the Owner due to the Hirers negligence, misdirection, or misuse of the plant whether by the Hirer or his servants, and for the payment of hire at the idle time rate as defined in Clause 25 during the period the plant is necessarily idle due to such breakdown, loss or damage. The hirer is responsible for the cost of spares and / or repairs due to theft, loss or vandalism of the plant. The Owner will be responsible for the cost of repairs, inclusive of the cost of spares to the plant involved in breakdown from all other causes.

## 10. OTHER STOPPAGES

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

## 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 what so ever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of plant working in conjunction therewith, provided that where two or more items of plant are expressly hired together as a unit, such items shall be deemed a unit for the purpose of breakdown.

## 12. LIMITATION OF LIABILITY

- Except for the 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 or statutory duty or misrepresentation or by reason of the commission of any sort (including but not limited to negligence) in connection with the hire, for any of the Hirers 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 Hirers 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. HIRERS RESPONSIBILITY FOR LOSS AND DAMAGE

- (a) For the avoidance of doubt it is hereby declared and agreed that nothing in this Clause affects the operation of Clauses 4, 5, 8 and 9 of this Agreement.
- (b) During the continuation of the hire period the Hirer shall subject to the provisions referred to in sub paragraph (a) make good to the Owner all loss of or damage to the plant from whatever cause the same 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 what so ever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading loading or use of the plant during the continuance of the hire period, and in respect of all costs and charges in connection therewith whether arising under statute or common law. In the event of loss or damage to the plant. Hire charges shall be continued at idle time rates as defined in Clause 25 until settlement has been effected.
- (c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury due to or arising :
- (i) 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 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, prior to its leaving (or, where the site is not immediately adjacent to a highway maintainable at the public expense, 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 Owners office. In relation to any claim in respect of which the Hirer is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owners consent in writing.

## 15. REHIRING ETC.

The plant or any part thereof shall not be re-hired. 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 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 Clause 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 free with (but without prejudice to any of the provisions of Clause 9 and /or 13) by giving written notice to the Hirer. If such determination occurs:

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

## 18. BASIS OF CHARGING

- (a) The Hirer shall render to the Owner for each week an accurate statement of the number of hours the plant has worked each day. Where the plant is accompanied by the Owners driver or operator, the Hirer shall sign the employees Time Record Sheets. The signature of the Hirers representative shall bind the Hirer to accept the hours shown on the Time Record Sheets.
- (b) Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of driver or operator supplied by the Owner except where breakdown is due to acts or omissions of third parties and/ or the Hirers 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 Friday less the actual hours worked.
- (d) Plant shall be hired out either;
- (i) For stated minimum number of hours per day per week or,
- (ii) Without qualification as to minimum hours: Odd days at the beginning and at the end of the hire period shall be charged pro rata.
- (e) Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one stoppage and any excess will be charged for at the appropriate idle time rates
- (f) In the case of plant which requires to be dismantled for the purpose of transportation, if the Owner agrees to a modification of the hire charge for the period required for assembling on site and dismantling upon completion of hire, such modification of the hire charge and the period of 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 HIRES 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 and 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 a additional pro rata charge will be made for the 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 1 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 days 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 defined in the Contract and in accordance with the rates and terms contained therein, subject to the provisions of Clause 26.

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

- (a) The hire period shall commence from the time when the plant leaves the Owners depot or place where last employed and shall continue until the plant is received back at the Owners depot or other agreed location but an allowance shall be made of not more than one days hire charge each way for travelling time. If the plant is to 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 Owners named depot or other agreed location.
- (b) An allowance of not more than one days 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 any other site to which consent to transfer has been given under Clause 16 for the 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 Hirers 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 7 days following the acceptance of short notice. Oral notice given by the Hirer to the Owners driver or operator shall be deemed to constitute compliance with provisions of this Clause.

## 25. IDLE TIME

When 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 / Clause 18

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 employers statutory contribution shall be charged as additions at cost by the Owner and shall be admitted and paid by the Hirer

## 27. TRAVELLING TIME AND FARES

Travelling time and fares for drivers, operators and any person supplied by the Owner, similar expenses incurred at the beginning and end of the hire period and where appropriate return fare of the driver, operator and any person supplied by the Owner to his Home will be chargeable at cost. No charge shall be made by the owner for any such expenses incurred by other employees of the Owner for the purpose of servicing, repair or maintenance of plant, unless necessitated by the Hirers 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 good grade or type specified by the Owner.

## 29. SHARPENING OF DRILLS/STEEL ETC

The cost or sharpening shall be borne by the Hirer.

## 30. OWNERS NAME PLATES

The Hirer shall not remove, deface or cover the Owners 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 Owners 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 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 driver supplied by the Owner, the Owner and not the hirer shall be responsible as foresaid.

## 33. PROTECTION OF OWNERS RIGHTS

- (a) The Hirer shall not rehire, sell, mortgage, charge, pledge, put 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 Owners rights in the plant may be prejudiced or put in 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 Hirers breach and it shall be lawful for the Owners 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 Hirers actual or deemed breach of 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. Clause 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, If the original site is in Scotland, the Contract shall in all respects be construed and operated as a Scottish contract, and shall be interpreted in accordance with Scots Law. If the original site is in Northern Ireland, the proper law of the Contract shall be Northern Ireland law.
- (b) The Scheme for Construction Contracts contained in the Scheme for Construction Contracts (England and Wales) Regulations 1998 or any amendment or re-enactment thereof for the time being in force, shall apply to the Contract. The person (if any) specified in the Contract to act as adjudicator may be named in the Offer. The specified nominating body to select adjudicators shall be the Construction Plant Hire Association acting by its President or Chief Executive for the time being. In paragraph 21 of the scheme "this paragraph" shall be deleted and "paragraph 20" substituted.
- (c) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator,; and shall submit to summary judgement and enforcement (and/or, under Scots Law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions, in each case, without any defence, set off, counterclaim, abatement or deduction. Where, under Scots Law, the Owner, the Hirer, or the adjudicator, wishes to register a decision of adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, fore with consent to such registration by subscribing the decision before a witness.