

## 1. DEFINITIONS

- (a) The “Owner” is Southdown Engineers Limited.
- (b) The “Hirer” is the Company, firm, person, Corporation or public authority taking the Owner’s plant on hire and includes their successors agents or personal representatives.
- (c) “Plant” covers all classes of plant, machinery, equipment and accessories which the Owner agrees to hire to the Hirer.
- (d) Where the Hirer collects or returns the plant, “the hire period” shall commence from the time when the plant leaves the Owner’s depot and shall continue until the plant is received back at the Owner’s depot. Where the Owner delivers or collects plant, the hire period shall commence on delivery and will continue until collection.
- (e) The “Contract” is the document or documents that set out the terms and conditions and all other details relevant to a particular transaction.
- (f) The contract shall be governed by and construed in accordance with the law of England.
- (g) The “full replacement cost” is the full current sales price charged by the Owner.

## 2. EXTENT OF CONTRACT

- (a) No conditions other than specifically set forth herein shall be deemed to be incorporated in or to form part of the Contract. These Conditions are the only terms upon which the Owner will accept orders for equipment. Any terms or conditions attached to the customer’s order shall be of no effect unless repeated herein or agreed to in writing by the Owners.
- (b) The Owner reserves the right to amend or modify terms and conditions subject to written notice to the Hirer.
- (c) Further copies of these terms and conditions are available on request.

## 3. ACCEPTANCE OF PLANT

- (a) Acceptance of the plant implies acceptance of all terms and conditions herein unless otherwise agreed by the Owner in writing.
- (b) Any performance details, quotations, advice or recommendation from the Owner is given in good faith but no responsibility is accepted. The Hirer must satisfy himself regarding the suitability of plant before ordering.

## 4. UNLOADING AND LOADING

- (a) The Hirer shall be responsible for unloading and loading the plant at site, and any personnel including drivers or operators supplied by the Owner shall be deemed to be under the Hirer’s control. Should the Hirer not be satisfied with any personnel supplied by the Owner he should immediately direct and ensure that work should stop and contact the Owner.
- (b) Should any vehicle supplied by the Owner be required to leave the Public Highway for the purpose of collection or delivery of plant, the Hirer shall be

responsible for all injury, loss and damage, howsoever caused, whether negligently, or otherwise, to the vehicle, plant, the site and anything on, under or affixed to the site. PROVIDED THAT nothing in this clause shall exclude liability of the Owner for death or personal injury caused as a result of the negligence of the Owner, or his servants.

(c) Should any collection of plant be aborted because of site conditions, restricted access, non-availability of Plant or loading facilities or personnel or any other reason, then the Hirer shall be responsible for the cost of continued hire charges for the plant not collected until either the plant is returned to the Owner’s depot or new arrangements agreed between the Hirer and the Owner lead to a successful rearranged collection.

(d) Should any vehicle supplied by the Owner for the purpose of collection or delivery of plant at site encounter any rough or soft ground, restricted access, obstruction or otherwise, the Hirer shall be responsible to ensure that the vehicle can reach or leave the site, and will be responsible for the cost of any damage to the vehicle, or property belonging to another person, howsoever caused and any aborted or demurrage transport charges or recovery costs.

(e) The use of crane loading equipment fitted to any vehicle is at the sole discretion of the driver and the Owner and where such equipment is used, the Hirer shall have the same responsibility as set out in paragraph 4 (a) above.

(f) Should the Hirer for any reason not be in a position to load or unload a vehicle, the Hirer shall be responsible for any delay and aborted or demurrage transport charges involved. Should that operation be aborted owing to site conditions then the full cost is chargeable to the Hirer.

(g) On delivery, collection or return of plant, the Hirer shall sign the appropriate note (the Note) supplied by the Owner. The person signing the Note shall be deemed to be an agent of the Hirer and the Owner accepts no responsibility for any incorrect or incomplete completion of the Note by the Hirer or his agent.

(h) Plant is collected from site or received at the Owners depot unchecked and unexamined. A full check and inspection will be made at the Owner’s depot and details of any missing or damaged items etc. will be notified to the Hirer and the procedure set out in clauses 12 (b), and 12 (c) will apply. Should the Hirer require to terminate hire charges and to write off or transfer to sale any item of plant not collected or returned, the procedures described in clauses 19 (c), 19 (d), 19 (e), 19 (f), 19 (g), 19 (h) and 19 (i) should be followed.

(i) Any aborted transport charges are charged at the same rate as the delivery or collection charge. Any demurrage transport charges are calculated at the current hourly rate for the vehicle involved.

(j) No responsibility is accepted by the Owner for any instructions, comments or observations made by or to any personnel supplied by the Owner. Should the Hirer have any requirement in this respect, the procedures laid down in this contract should be followed.

(k) Any delivery or collection dates or times quoted are estimates only and not guaranteed, and time shall not be of the essence of the contract.

(l) One half hour is allowed for time spent on site by a vehicle during any delivery or collection without charge. After that time, the Hirer shall be responsible for a demurrage charge.

(m) Where it has been arranged that plant will be laid down, installed or sited by the Owner upon delivery or subsequent movement, the Hirer must satisfy himself that his requirements are met before the plant is used.

(n) The Owner will provide delivery vehicles in accordance with mainland U.K C&U regulations and emission limits. Any requirements over and above this will be notified by the Hirer in writing, prior to the delivery or collection. Delays or expenses borne out of those requirements will be at the hirers cost.

(o) The Owner will provide drivers and staff qualified accordance with U.K H&S and employment eligibility standards and standard 5 point PPE. Any requirements over and above this will be notified by the Hirer in writing, prior to the delivery or collection. Delays or expenses borne out of those requirements will be at the hirers cost.

(p) The date of delivery/collection will be deemed within the following working hours – 07.30 hrs to 17.30 hrs – Monday to Friday, and 08.00 hrs to 13.00 hrs on Saturdays unless mutually agreed beforehand.

#### **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 within three working days of the plant being delivered to site, the plant shall be deemed to have been correctly supplied and in good order. The Hirer shall be responsible for its safekeeping, use in a workmanlike manner within the manufacturers rated capacity and return on completion of the hire in equal good order.

(b) The Hirer shall when hiring plant take all reasonable steps to keep himself acquainted with the state and condition of the plant. If such plant be continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom.

(c) The current Inspection Report or Test Certificate or similar required under the relevant legislation or a copy thereof, shall be supplied by the Owner if requested by the Hirer.

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

#### **7. TIMBER MATS OR PORTABLE/TEMPORARY ROADWAY**

(a) If the ground (including any private access road or track) is soft or unsuitable for plant to work on or for any vehicle supplied by the Owner to travel over without timbers or portable roadway the Hirer shall be responsible for the supply and lay suitable timbers, plating or portable roadway.

(b) Should any vehicle or plant become bogged down or trapped as a result of ground conditions the liability for recovery will be that of the Hirer's together with any costs involved.

(c) Should any timber mats, plating or portable roadway be supplied by the Owner to the Hirer, it is the Hirer's responsibility to ensure that ground conditions are suitable for their proper use, and any levelling, propping, stabilisation works or grading works required are properly carried out prior to use.

#### **8. BREAKDOWN, REPAIRS AND ADJUSTMENT**

(a) Any breakdown or unsatisfactory working of any part of the plant must be immediately notified to the Owner.

(b) The Hirer shall not, except for punctures, repair or modify the plant without the written authority of the Owner. Punctures are however the responsibility of the Hirer.

(c) The Hirer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner due to the Hirer's negligence, misdirection or misuse of the plant, whether by the Hirer or his servants, and for payment of hire during the period the plant is necessarily idle due to such breakdown or damage.

**9. OTHER STOPPAGES** No claim will be admitted 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.

#### **10. LOSS OF USE 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 herewith.

#### **11. CONSEQUENTIAL LOSSES**

(a) The Owner accepts no liability nor responsibility for any consequential loss or damage howsoever caused.

(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.

**12. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE**

(a) During the continuance of the hire period the Hirer shall make good to the Owner all loss of or damage to the plant from whatever cause the same may arise 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 use of the plant 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 until settlement has been effected.

(b) All plant is supplied in good clean, serviceable condition. There will be a charge to the Hirer for any item returned or collected requiring cleaning, repair or replacement.

(c) If the Owner considers that cleaning, repairing or replacement of any plant is necessary, the Owner will notify the Hirer, orally or in writing or electronically, and the Hirer shall have the right to inspect such plant at the Owner's depot and make representations as to the necessity of any cleaning, repair or replacement or charges relating thereto within three working days of notification. Following any representation, the Owners decision will be final. If the Hirer fails to inspect, or make representations within the time limit, he will be deemed to accept the necessity for such cleaning, repair or replacement and the charges relating thereto.

(d) THE HIRER IS ADVISED TO INSURE FOR THE FULL REPLACEMENT COST OF PLANT.

(e) Where plant is advised as lost or stolen and replacement is charged, should the plant subsequently be located and returned to the Owner by the Hirer, an appropriate credit will be issued. However the period while the plant was missing will be chargeable at the full hire rate, and the issue of any credit is strictly subject to this condition. Where plant is lost or not returned at the termination of hire, the Hirer is responsible for full replacement cost. In the event of damage to plant, where the plant can be economically repaired, cost of repairs will be charged to the Hirer. In all other instances full replacement cost will be chargeable.

(f) The Hirer must maintain his security and insurance arrangements during any holiday or shutdown period.

**13. 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, and in respect of any claim not within the Hirer's agreement for indemnity, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's or their Insurers consent in writing.

**14. RE-HIRING.** The plant or any part thereof shall not be re-hired, sub-let or lent to any third party without the Owner's consent in writing.

**15. CHANGE OF SITE** The plant shall not be moved from the site to which it was delivered or consigned without the authority of the Owner in writing.

**16. RETURN OF PLANT FOR REPAIRS** If during the hire period the Owner decides that repairs are required, replacement plant will be supplied if necessary. In the event of the Owner being unable to replace the plant, he shall be entitled to determine the Contract forthwith by giving written notice to the Hirer.

**17. BASIS OF CHARGING** Plant or vehicles shall be hired out at "per day" or "per week" or "per hour" for a minimum period as shown in a published hire rate list, a copy of which is available on request. All charges will conform to those shown and will be strictly applied unless otherwise confirmed in writing by the Owner to the Hirer. In the case of plant hired "per week" for a minimum period, odd days at the end of the hire period shall be charged pro rata and charges are based on a five day working week, being Monday to Friday. During any statutory holiday or construction industry shutdown period, where mechanical plant is not in use an appropriate credit will be granted. All non-mechanical plant will be charged throughout. Non-mechanical plant is all that plant which main function is not electrically or mechanically powered.

**18. PLANT HIRED BY THE WEEK WITHOUT QUALIFICATION AS TO HOURS** The weekly 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 at the rate of one-fifth of the agreed weekly rate will be made for each full working day broken down calculated to the nearest half working day. No allowance will be made for breakdowns on Saturdays or Sundays.

**19. NOTICE OF TERMINATION**

(a) The Owner will not accept any termination instructions from the Hirer at the time of the placing of any hire order.

(b) Hirers wishing to order plant for a specific period of time must terminate the contract in the way described herein and must not rely on any details or

instructions regarding length of time plant is required given to the Owner.

(c) The contract shall be determinable by seven working days (not counting statutory holidays, weekends or construction industry shutdown days) notice in writing given by either party to the other except in cases where plant has been lost or damaged, or where clause 27

(b) below applies, or where minimum notice of termination periods apply.

(d) Hirers wishing to give termination instructions by telephone are bound by the same notice requirements contained in clause (c) and should request and note a termination reference number and the name of the Owner's representative concerned. Full details should then be confirmed in writing by the Hirer to the Owner.

(e) Receipt of written or telephoned termination instructions by the Owner will be confirmed to the Hirer in writing. Should the Hirer not receive any confirmation within seven days of giving termination instructions the Hirer should contact the Owner and request such confirmation and a termination number which should be noted and retained.

(f) In the event of any dispute the details contained in clauses 19 (d) and 19 (e) above must be provided.

(g) Where a Hirer gives notice to terminate the contract, in accordance with clause 19 (c) and 19 (d) above, and wishes the Owner to collect plant from site, a full seven working days (not counting statutory holidays, weekends or construction industry shutdown days), from the day of notice of termination must be allowed for collection from site. The Hirer is fully responsible for all plant during this period and until collected from site and the Hirer must make all necessary arrangements in order to comply with all the transport and collection requirements contained in this contract. The Hirer is fully responsible for any losses or damage sustained during this period. The Hirer should arrange any insurance accordingly.

(h) Notice given by the Hirer to the Owner's driver shall not be deemed to constitute compliance with the provisions of this clause.

(i) Notwithstanding that the Owner may have agreed to accept less than 7 day notice of termination, the Hirer's obligations shall continue until the plant is returned to the Owner or until the Owner has collected the plant.

**20. OWNER'S NAME PLATES** The Hirer shall not remove, deface or cover up the Owners' name plate or mark on the plant indicating that it is his property.

**21. TRANSPORT** The Hirer shall pay the cost of and if required by the Owner, arrange transport of the plant from the Owner's depot to the site and return to depot on completion of the hire period.

**22. GOVERNMENT REGULATIONS** Where any item of plant or transport is supplied, by the Owner, 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.

### **23. 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 14 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.

(b) If the Hirer makes default in punctual payment of any sums 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 being a Company, shall go into any form of insolvency or do or shall 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 shall forthwith be terminated (without any notice or other act on the part of the Owner and notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature), and it shall thereupon be lawful for the Owner to retake possession of the said plant and for that purpose enter into or upon any premises where the same may be and the determination of the hiring under this Condition shall not affect the right of the Owner to recover from the Hirer any monies due to the Owner under the Contract or damages for breach thereof.

**24. ENFORCED TRANSFERENCE OF CONTRACT** In the event of any items of the plant comprised in this hire Contract being used by the Hirer on or in connection with a contract for the construction of works or buildings and of a forfeiture of such contract being made by the Employer thereunder the Owner will upon request in writing made by the Employer within seven days after the date when such forfeiture has become effective and on such Employer undertaking to pay all hire charges therefore from such last mentioned date, hire such item or items to such Employer for the remainder of the period during which such item or items were hired to the Hirer upon the same terms in all respects as are herein contained save that notwithstanding the provisions of Clause 23 hereof such Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of completing the works or buildings comprised in such contract.

**25. HIRE OF TRANSPORT** Where the hire is for transport and vehicles rather than plant, the current

terms of the Road Haulage Association conditions of carriage shall apply, a copy of which is available on request. In addition to these terms, those parts of this contract which are relevant to vehicles shall also apply including all references to on site and off the Public Highway conditions.

**26. FOUNDATIONS** The Hirer shall provide suitable foundations in an acceptable position for any portable accommodation unit to stand on. In case of doubt reference should be made to the Owner.

**27. PAYMENT**

(a) Where account facilities have been granted in writing all invoices must be paid within 30 days from date of invoice. Failure to pay any invoice within the 30 day period will result in the immediate withdrawal of all credit account facilities and all invoices rendered and all future invoices to be rendered will be immediately due and payable. Where no such facilities have been granted payment will be with order or where previously agreed on delivery. Where these terms are exceeded interest shall be payable at the rate of 3% per month on the balance outstanding from the date payment was due until the date when payment is actually received. This should be without prejudice to any other rights or remedies available.

(b) Should the Hirer fail to ensure prompt payment the Owner may require the Hirer to return all plant. Having been requested to do so, should the Hirer fail to return the plant the Owner may arrange to collect and repossess plant from site. If the Owner is unable to collect plant, or any part thereof from site, for any reason then such plant, or part thereof shall be deemed to have been sold to the Hirer as at the date of collection or attempted collection at the full replacement cost of such plant or part thereof. If any plant collected or received from the Hirer is in need of repair, replacement or cleaning, the procedure set out in clauses 12 (c) will apply.

(c) In the event of the Owner deeming it necessary to commence legal action to recover unpaid accounts, the Owner reserves the right to include all costs, expenses and interest in the claim.

(d) Should the Hirer wish to query or dispute any part of any charge rendered, written notification must be given to the Owner within the period allowed for payment. Any subsequent query or dispute will be considered by the Owner, and where a settlement is agreed an appropriate credit or refund will be issued, but is disallowed for the purpose of withholding prompt payment by the Hirer.

(e) The Owners base currency is sterling. By prior arrangement, the Hirer may open an account in Euro's.

**28. DATA PROTECTION** The Owner may supply information relating the Hirer to a credit reference agency and to any company requiring a trade reference. For all purposes connected with the Data

Protection Act, the Owners Company Secretary has been designated as the Data Controller

## **TERMS AND CONDITIONS OF SALE**

For the purpose of defining these terms and conditions of sale, the following clauses shown in the terms and conditions of hire will also apply, and where the term Owner or Hirer is used this should be taken as meaning Seller/Carrier, Buyer, or Recipient in this context. 2.Extent of contract. 11.Consequential losses. 3.Acceptance of plant. 13.Notice of accidents. 4.Unloading and loading. 22.Government regulations. 5.Delivery in good order and maintenance. 26.Foundation. 7.Timber mats or portable roadway. 27.Payment.

### **1. DEFINITION OF LAW**

- (a) The complete contract is the document or documents that set out the terms and conditions and all other details relevant to a particular transaction and is hereinafter referred to as 'the Contract'.
- (b) The goods supplied by the Seller to the Buyer shall hereinafter be referred to as 'the Goods'.
- (c) The person, firm, Company, Corporation or public authority shown overleaf as the invoice is 'the Buyer'.
- (d) The parties to the Contract are the Seller and the Buyer.
- (e) The person, firm, Company, Corporation or public authority responsible for delivery of the Goods to the delivery address, including the Seller when the Seller delivers, shall hereinafter be referred to as 'the Carrier'.
- (f) The person, firm, Company, Corporation or public authority to whom the Goods are delivered when it is not the Buyer is hereinafter known as 'the Recipient'.
- (g) The contract shall be governed by and construed with the law of England.

### **2. RISK AND TITLE TO GOODS**

- (a) The risk in the Goods shall pass to the Buyer immediately on delivery to the Buyer or to the Recipient.
- (b) The property in the Goods shall remain vested in the Seller and the Seller reserves the right to dispose of the Goods, until such time as the price thereof shall have been paid in full. If such payment is overdue in whole or in part, or if the Buyer is in breach of any of the terms of this agreement, or if any act or proceeding in which the Buyers solvency is involved or is commenced, the Seller may (without prejudice to any of the Sellers other rights) recover or resell the Goods or any part of them and may enter upon the Buyers land and premises by the Sellers servants or agents for that purpose.

**3. RECIPIENT** The Buyer or Recipient on behalf of the Buyer, shall receive and unload the Goods and shall check the same for quality and condition in the presence of the Carrier. If there is a shortage or if the Goods are in an unsatisfactory condition, the Buyer or Recipient must so endorse the Carriers delivery document and must give separate written notice thereof to the Seller within three days of delivery. If

this condition is not observed, no claim in respect of shortage or of unsatisfactory condition of the Goods will be entertained. The condition does not affect the statutory rights of the Buyer.

**4. PRICE** The price charged will be the price ruling at the time of delivery. Where this is at variance with the price quoted when the Goods were ordered the Buyer will be advised prior to delivery.

### **5. WHEN THE CONTRACT COMES INTO BEING**

The Contract shall come into being between the Buyer and the Seller when the Buyer has placed an order, and the Seller has accepted the order.

### **6. WHEN SIGNATURE FOR RECEIPT OF GOODS BECOMES OPERATIVE**

When for administrative convenience the Buyer or his agent is requested by the Seller to sign a contract and/or delivery note before the Goods are handed over to the Buyer, or his agent agrees to examine the Goods at the time of the physical hand-over and the effect of such signature in respect of receipt of the Goods will not become operative until immediately after the physical hand-over.

**7. RIGHTS RESERVED** Any failure by the Seller to enforce any or all of these conditions shall not be construed as a waiver of any of the Sellers rights hereunder.

**8. SEPARATE TERM VALIDITY** Should any term in this Contract be held invalid such invalidation shall not affect the validity of the remaining terms. Headings in these conditions are for reference purposes and shall not affect the interpretation of these conditions.

**9. TERMS OF CONTRACT** These conditions have effect in substitution for, and the exclusion of, any conditions put forward by the Buyer.

**10. GUARANTEES** Any guarantee or warranty related to the Goods is in respect of faulty manufacture or workmanship only and the guarantee period is limited to 90 days inclusive from the date of supply. In the event of a complaint, Goods must be returned carriage paid to the Seller for inspection. In the event of a dispute the Seller's decision will be final.