



# THE SCOTTISH PLANT OWNERS ASSOCIATION

## CONSUMER CONDITIONS OF HIRE

These conditions of hire ("these Conditions") are the model conditions of the Scottish Plant Owners Association ("SPOA") for consumer hires. Copyright in these Conditions may not be copied or reproduced in whole or in part in any manner or form without the permission of the SPOA.

### PLEASE READ THESE CONDITIONS CAREFULLY AND RETAIN A COPY FOR FUTURE REFERENCE

#### 1. General

- 1.1 This is a contract for you to hire from us plant/equipment.
- 1.2 These conditions shall apply to all plant/equipment hired by you from us, to the entire exclusion of all other terms and conditions.
- 1.3 No variation of any of these conditions shall be effective unless in writing and signed by our duly authorised representative.
- 1.4 Subject to clause 15.1 below, if the contract is entered into between us and you by post, telephone, email, on line or otherwise than at our business premises, you have fourteen days from the date after the date that we provide written notice of acceptance of the order in which to cancel the contract ("Cancellation Period").

#### 2. Period of Hire

- 2.1 You are not allowed to hire the plant/equipment for more than three calendar months and the contract between us shall automatically come to an end at the end of any such three month period.
- 2.2 The period of hire shall begin when you collect the plant/equipment from us or, where we arrange delivery, the time the plant/equipment arrives at your site.
- 2.3 The period of hire shall come to an end when you return the plant/equipment to us or when we take the plant/equipment back under our control.

#### 3. Non-Business Hire

As a consumer, you may only use the plant/equipment hired from us for private or non-commercial use.

#### 4. Delivery and Collection

- 4.1 If we deliver the plant/equipment to you and/or collect it, the cost of delivery and/or collection will be additional to the hire charges.
- 4.2 Where we agree delivery to you, we will give you an estimated delivery time. Every effort will be made to deliver promptly but we cannot guarantee the delivery time. You should let us know in writing if there is a particular reason why timing is important.

We will not be liable for any loss or damage suffered by you through any reasonable or unavoidable delay in delivery. In these circumstances, we will inform you as soon as possible.

- 4.3 When we agree delivery or collection you must ensure that there is sufficient and unobstructed access to and from the relevant site and ensure that there is sufficient loading and unloading space. Any personnel we supply for such loading or unloading shall be considered to be under your direction and control. You shall be solely responsible for any instruction, guidance and/or advice given by you to such person and for any damage which occurs as a result of such person following your instructions, guidance and/or advice.

#### 5. Risk, Ownership and Insurance

- 5.1 The plant/equipment shall remain our property at all times.
- 5.2 Risk in, and liability for loss or damage to, the plant/equipment will pass to you when it leaves our physical possession or control.
- 5.3 We may provide insurance in respect of the plant/equipment at additional cost to the hire charges. Alternatively, we may require you to insure the plant/equipment on such reasonable terms and for such reasonable risks as we may specify. The proceeds of any such insurance shall be held by you in trust for us and be paid to us on demand. You must not compromise any claim in respect of the plant/equipment without our written consent.
- 5.4 Risk in the plant/equipment will not pass back to us from you until we have physical possession of the plant/equipment. This applies even if we have agreed to stop charging hire charges.

#### 6. Keeping the Plant/Equipment Safe

- 6.1 You must inspect the plant/equipment when you take it from us or, when we deliver the plant/equipment to you, when it arrives at your site. If you have any complaint about the plant/equipment, you should notify us in writing at [the address, fax number or e-mail address shown below].
- 6.2 During the period of hire, you shall be responsible at all times for ensuring the safekeeping of the plant/equipment and returning it to us or allowing us to uplift it, whichever we agree, in the same condition as that in which it was delivered (fair wear and tear excepted).



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**6.3** If the plant/equipment is used in an unsafe state or environment, you shall be responsible for any damage, loss or accidents arising from this.

### **7. Breakdown**

**7.1** No hire charge will be made for any stoppages due to the breakdown of the plant/equipment caused by the development of an inherent fault and/or fair wear and tear and/or for stoppages for normal working repairs provided that you inform us within 24 hours of the breakdown. Where we are unable to repair the plant/equipment, we shall be entitled to supply in substitution, plant/equipment of a similar type and condition. If we are not able to do this, the contract between us shall automatically come to an end from the date of the breakdown.

**7.2** You shall be responsible for all expenses, loss (including loss of hire charges) and/or damage which we suffer as a result of any breakdown of the plant/equipment due to your negligence, and/or misuse of the plant/equipment.

### **8. Loss or Damage to Plant/Equipment**

**8.1** If the plant/equipment is returned damaged, unclean and/or in a defective condition, except where due to fair wear and tear, you shall be liable to pay to us the cost of any repair and/or cleaning required to return the plant/equipment to a condition fit for re-hire and also the hire charges until such repairs and/or cleaning have been completed.

**8.2** You will pay to us the replacement cost on a new for old basis of plant/equipment which is lost, stolen and/or damaged beyond economic repair during the period of hire (less any amount paid to us under any policy of insurance taken out under these conditions). You shall also pay to us the hire charges until we have been paid in full the amount for such replacement cost of the plant/equipment.

**8.3** If the plant/equipment is stolen, you will report the theft to the police and supply a detailed description of the plant/equipment to assist in its recovery.

### **9. Care of Plant/Equipment**

**9.1** During the period of hire you shall:-

- (i) keep the plant/equipment at all times in your possession or control;
- (ii) take adequate and proper measures to protect the plant/equipment from theft, damage and/or risks;
- (iii) only use the plant/equipment for its proper purpose in a safe and correct manner in accordance with any operating and/or safety

instructions which we provide to you;

- (iv) use the plant/equipment in a careful and proper manner and not remove, deface or cover up our name plate or mark on the plant/equipment indicating that it belongs to us;
- (v) where the plant/equipment requires fuel, oil and/or grease, ensure that such items are of good quality and meet the appropriate specification or the plant/equipment;
- (vi) not sell, sub-let, hire, assign, grant security over, deal with or part with possession or control of the plant/equipment or any part of it;
- (vii) not repair or adjust the plant/equipment unless you have written authorisation from us;
- (viii) give us immediate notice of any damage to the plant/equipment or any theft, seizure or loss of possession of the plant/equipment;
- (ix) give us immediate notice of any change in your address;
- (x) give us immediate notice if the plant is involved in any accident resulting in injury to persons or damage to property; and
- (xi) allow us or our representatives access to the plant/equipment at all reasonable times for the purpose of inspecting, testing, adjusting, repairing or replacing.

### **10. Plant/Equipment and Operator**

**10.1** Where an operator is provided with the plant/equipment, we will ensure that he is competent and qualified to operate the plant/equipment which you hire from us.

**10.2** It is your responsibility to give the operator clear instructions regarding the job you wish to be carried out and you must provide the operator with any further information or explanation if requested to do so.

**10.3** The operator will work under your supervision and at your instruction, and you may not permit any person other than the operator to operate the plant/equipment without our prior written consent.

**10.4** You must follow any safety instructions given by the operator of the plant/equipment. You must also take your own safety precautions, particularly when the plant/equipment is on site overnight and our operator is not able to oversee it.



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**10.5 During the period of hire, you shall be responsible for the actions or omissions of the operator, as if he were employed by you, to the effect that you must indemnify us in respect of any claims which may be made against us by (a) third parties as a consequence of any acts or omissions of the operator, including claims arising from the operator's negligence or breach of statutory duty; and/or (b) by the operator in respect of any loss or damage suffered by him. You will not be responsible for any such claims to the extent that the loss or damage results from our negligence or breach of contract.**

### 11. Charges

**11.1** The amount of any deposit, hire charges, operator charges (including overtime rates) and delivery/ collection charges shall be as quoted to you or otherwise as shown in our current price list. (All our prices are exclusive of any applicable VAT for which you shall be additionally liable). Where we require a deposit, it must be paid in advance of you hiring the plant/equipment. We may also require an initial payment on account of the hire charges in advance of you hiring plant/equipment from us.

**11.2** The basis of hire charges quoted to you or otherwise as shown in our current price list are as follows:-

- (i) the weekly rate (from start of business on Monday until close of business on the following Friday) is charged on the basis of 39 hours, unless otherwise stated. (Please note that hours worked in excess of that stated shall be charged pro-rata);
- (ii) the daily rate is charged on the basis of a minimum of eight hours per day (except Friday which shall be seven hours) unless otherwise stated. (Please note that hours worked in excess of that stated shall be charged pro-rata);
- (iii) where plant/equipment is hired with an operator on the basis of a composite rate, any hours worked in excess of that stated shall be charged pro-rata, the hourly rate arrived at by dividing the weekly rate or daily rate as applicable, by the number of hours so stated.

### 11.3 Overtime

Where plant/equipment is hired with an operator on the basis of a separate rate for the plant/equipment and a separate rate for the operator, hours worked in excess of that stated shall be charged pro-rata plus the operator's premium overtime rate, which will be additionally chargeable.

### 11.4 Standing Time

Where plant/equipment is hired with an operator, the time during which the plant/equipment supplied

with such an operator is standing idle and available for work ("Standing Time") will be charged. The charge rate shall either be (a) two thirds of the plant/equipment rate plus the operator at his standard rate or (b) where the plant/equipment is hired with an operator on the basis of a composite rate, two thirds of such composite rate. In computing Standing Time, periods of shorter duration than those for which the rates are quoted shall be treated as working time. A standing period of less than a week shall be treated as working time where the plant/equipment is hired for a week of a specified number of hours and, in any event, a standing period of less than one day shall be treated as working time.

### 11.5 Other charges:-

- (i) any consumable item, such as fuel, oil, AdBlue or grease supplied by us shall be charged to you;
- (ii) if you fail to drain the tank of rebated fuel (like Red Diesel), the cost of us draining the tank and replenishing with duty paid fuel shall be charged to you at the minimum rate of one hour labour plus fuel used;
- (iii) where applicable, the cost of resharpening drills/ steels etc shall be met by you;
- (iv) you shall be responsible for the cost or expense of recovering any plant/equipment from soft ground;
- (v) time spent in assembling, rigging and dismantling plant/equipment for you shall be charged for and these costs shall also be paid for by you; and
- (vi) any costs incurred by an operator in travelling to and from either our depot or the operator's home to your site shall be charged to you.

**11.6** Time of payment under our contract shall be of the essence. Payment shall not be deemed to have been made until we have received either cash or cleared funds in respect of the full amount outstanding.

**11.7** If you fail to make payment on the due date, we may charge interest at the rate of 3% per annum above the base rate of our bank from time to time (both before and after any court judgment) on the amount outstanding from the due date until we receive payment in full.

### 12. Termination due to default

**12.1** If you:-

- (i) fail to pay any charges or other sums payable under our contract when they become due (whether demanded or not); or



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- (ii) commit a breach of any other terms and conditions of our contract; or
- (iii) do or allow to be done any act or thing which in our opinion may jeopardise our rights in the plant/equipment or any part thereof, then we shall, without prejudice to any other right or remedy available to us, have the right to automatically bring our contract to an end without notice and without us having any liability to you.

### 13. Termination by Notice

- 13.1 If the period of hire has a fixed duration neither of us shall be entitled to terminate our contract before the expiry of that period unless we both agree otherwise.
- 13.2 If the period of hire does not have a fixed duration either of us may terminate our contract upon giving to the other not less than two (2) days' notice.

### 14. Automatic Termination

- 14.1 If any of the following events occur:-
  - (i) if you make any voluntary arrangement with your creditors or you die or become bankrupt or an encumbrancer takes possession, or a court appointed supervisor is appointed over any of your property or assets; or
  - (ii) you are unable to pay your debts as they fall due; or
  - (iii) if any diligence, execution or other legal process shall be levied on or against the plant/equipment or any part thereof or against any premises where the plant/equipment is or against your property or assets, then in each and every case our contract shall automatically come to an end without notice and without us having any liability to you.

### 15. Consequences of Termination or Expiry

- 15.1 Upon expiry or termination of our contract for whatever reason:-
  - 15.1.1 all payments due to us under our contract shall be immediately due and payable;
  - 15.1.2 you shall return to us, or make available for collection by us, the plant/equipment. At any time after such termination, we may enter, without prior notice, any of your premises (or premises of third parties with their consent) where the plant/equipment may be and retake possession of the plant/equipment. For the avoidance of doubt any repossession of the plant/equipment shall not affect our right to recover

from you any sums due under our contract and/or any damages in respect of any breach by you of the terms of our contract.

- 15.2 In the event of cancellation pursuant to clause 1.4 we shall refund any deposit within fourteen days less any hire charge due for the period of your use of the plant/equipment.

### 16. Liability

- 16.1 If either of us are in breach of the arrangements under our contract, neither of us will be responsible for any losses that the other suffers as a result, except those losses which are a foreseeable consequence of the breach.
  - 16.2 The amount that we charge you for the hire of the plant/equipment assumes that the plant/equipment is not being used for commercial or business purposes. For this reason, if we are in breach of our contract and you want to make a claim against us we will not accept any claims which relate to business expenses or losses. For example, we will not accept any claims for loss of profits.
  - 16.3 If a third party claims from us for any loss or damage that the plant/equipment causes him, then you must meet all the costs of such claim if it results from your breach of the arrangement under our contract. You will not be responsible for such a claim to the extent that the loss or damage results from our negligence or breach of contract.
  - 16.4 It is important for you to note that:
    - 16.4.1 our liability for loss, destruction or damage to goods or property (other than goods being lifted by crane which is covered below) is limited to a total of £• whether or not due to our breach of contract or negligence; and
    - 16.4.2 if you are undertaking a lifting operation our liability for loss, destruction or damage to the goods being lifted is limited to a total of £• whether or not due to our breach of contract or negligence.
- If you think that either of these limits are too low for your particular circumstances or if you wish to insure your liabilities under this clause 16 through us, you must let us know in writing before hiring the plant/equipment so that we can offer you the additional cover for which we will pass on to you the reasonable cost as an extra charge. If you do not ask us to increase insurance cover then you must understand that you will not be able to claim more than the amounts outlined above, even where we are at fault, except where your claim is for death or personal injury, as mentioned in clause 16.5 below.
- 16.5 The limits outlined in clause 16.4 do not apply to claims for death or personal injury caused by our negligence. There is no limit on the amount of such claims.



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### 17. Data Protection

- 17.1 We will take all reasonable precautions to keep the details of your order and payment secure, but unless we are negligent, we will not be liable for unauthorised access to information supplied by you.
- 17.2 We will only use the information you provide about yourself for the purpose of fulfilling our contract, unless you agree otherwise. You can correct any information about you, or ask for information about you to be deleted, by giving written notice to us at the [address or e-mail address shown below].

### 18. Miscellaneous

- 18.1 No waiver by either of us of any breach of our contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.2 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.
- 18.3 You consent to registration of our contract (and any certificate given in respect thereof) for preservation and execution. A certificate signed for and on behalf of us shall be sufficient to fix and ascertain the sums due by you to us under our contract and shall be conclusive of the amounts due.

### 19. Applicable Law

These conditions and the hire of plant/equipment will be subject to Scots law, and the Scottish courts will have jurisdiction in respect of any dispute arising from our contract.