

## **TERMS AND CONDITIONS FOR THE HIRE OF PLANT FROM LANCASTRIA LLP**

The Customer's attention is particularly drawn to the provisions of clause 11.

### **1. Definitions**

1.1 In these terms and conditions, the following definitions and rules of interpretation apply: "Contract" means the contract between the Owner and Hirer for the hire of the Plant, which is governed by these terms and conditions. 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. "Hirer" means the company, firm, person or public authority taking the Owner's Plant on hire and includes their successors and personal representatives. "Offer" means the Hirer's offer (howsoever made) for the hire of Plant or the Hirer's acceptance of the Owner's quotation for the hire of Plant. "Owner" means Lancastria LLP (registration number OC360523), being the person letting the Plant on hire and includes their successors, assigns or personal representatives. "Plant" covers all classes of plant, machinery, vehicles, equipment and all accessories thereof, which the Owner agrees to hire to the Hirer. "Site" means the site to which the Plant shall be delivered or consigned, as agreed between the Owner and Hirer. Clause headings shall not affect the interpretation of these terms and conditions. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. Unless the context requires otherwise, words in the singular shall include the plural and vice versa. A reference to writing or written includes fax and e-mail (subject to clause 31). Any obligation on a party not to do something includes an obligation not to allow that thing to be done. Any words following the terms including, include, in particular, for example, without limitation or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### **2. Extent of contract and acceptance of plant**

2.1 The Offer constitutes an offer by the Hirer to hire Plant from the Owner in accordance with these terms and conditions.

2.2 The Offer shall only be deemed to be accepted by the Owner when the Owner issues written acceptance of the Offer or delivers the Plant to site. Acceptance by the Hirer of the Plant on site implies acceptance of all terms and conditions herein unless otherwise agreed in writing by the Owner and Hirer.

2.3 The Contract constitutes the entire agreement between the parties. Save as expressly agreed in writing by the Owner, no terms, conditions or warranties other than as specifically set forth 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 Hirer in relation to the hire of any particular Plant. These terms and conditions apply to the Contract to the exclusion of any other terms or conditions that the Hirer seeks to impose or incorporate or which are implied by trade, customer, practice or course of dealing.

2.4 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. Unloading and Loading**

3.1 Unless otherwise agreed in writing, the Owner shall at the Hirer's expense unload and install the Plant at the site. Notwithstanding the foregoing, to the extent permitted by law the Hirer shall be responsible for all claims arising in connection with the delivery, unloading and installation of the Plant and shall indemnify the Owner for any and all liability the Owner incurs or suffers in respect of the same.

3.2 In all cases the Hirer shall provide unobstructed access and suitable working conditions to enable delivery and installation of the Plant at the site and, unless otherwise agreed in writing, shall provide all requisite materials and facilities to enable delivery and installation to be carried out safely and expeditiously.

### **4. Delivery in good order and maintenance: inspection reports**

4.1 The Hirer shall procure that a duly authorised representative of the Hirer shall be present at the delivery of the Plant. Acceptance of delivery by such representative of the Hirer shall constitute conclusive evidence that the Hirer has examined the Plant and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards latent defects not reasonably apparent on inspection). If required by the Owner, the Hirer's duly authorised representative shall sign a receipt confirming such acceptance.

4.2 Where the Owner shall install the Plant at the site (which unless otherwise agreed in writing shall be at the cost of the Hirer), the Hirer shall procure that a duly authorised representative of the Hirer shall be present at the installation of the Plant. Acceptance by such representative of installation shall constitute conclusive evidence that the Hirer has examined the Plant and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Owner, the Hirer's duly authorised representative shall sign a receipt confirming such acceptance.

4.3 Without prejudice to the other provisions of this Clause 4, 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 site, the Plant shall be deemed as in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Contract and to the Hirer's satisfaction, provided that where Plant requires to be installed or erected on site, the periods above stated shall be calculated from the date of completed installation or erection of the Plant.

4.4 The Hirer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and/or Owner's recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted).

4.5 The Hirer shall at all times when hiring Plant without the Owner's operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the Plant.

4.6 Without prejudice to Clause 12, the Hirer shall be solely responsible for any damage, loss, cost, expense or accident arising whether directly or indirectly from or otherwise in connection with the Plant or its use or work at any time during the Hire Period.

4.7 Any inspection report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner if requested by the Hirer and returned on completion of the Hire Period.

4.8 Any dates and times quoted for delivery are approximate only, and the time of delivery is not of the essence.

4.9 Any and all costs and expenses incurred by the Owner in delivering or collecting the Plant (or attempting the same) in any circumstances whatsoever (except pursuant to Clause 16) shall be borne by the Hirer.

### **5. Return of Plant**

5.1 Unless otherwise agreed in writing, the Owner shall at the Hirer's expense collect and return the Plant to the Owner's depot or other agreed location at the end of the Hire Period. Notwithstanding the foregoing, to the extent permitted by law the Hirer shall be responsible for all claims arising in connection with the collection and removal of the Plant and shall indemnify the Owner for any and all liability the Owner incurs or suffers in respect of the same.

5.2 In all cases the Hirer shall provide unobstructed access and suitable working conditions to enable collection and removal of the Plant from the site and, unless otherwise agreed in writing, shall provide all requisite materials and facilities to enable collection and removal to be carried out safely and expeditiously.

### **6. Title, risk and insurance**

6.1 The Plant shall at all times remain the property of the Owner, and the Hirer shall have no right, title or interest in or to the Plant (save the right to possession and use of the Plant subject to these terms and conditions).

6.2 The Hirer shall ensure that at all times the Plant remains identifiable as being the Owner's property and wherever possible shall ensure that a visible sign to that effect is attached to the Plant.

6.3 Without prejudice to Clause 12, the risk of loss, theft, damage or destruction of the Plant shall pass to the Hirer on delivery. The Plant shall remain at the sole risk of the Hirer during the Hire Period and any further term during which the Plant is in the possession, custody or control of the Hirer (Risk Period).

6.4 Unless otherwise agreed in writing by the Owner, during the Hire Period and the Risk Period the Hirer shall, at its own expense, obtain and maintain the following insurances:

(a) insurance of the Plant to a value not less than its full replacement value comprehensively against:

(i) all risks of loss;

(ii) damage or destruction by fire, theft or accident; and

(iii) such other risks as the Owner may from time to time nominate in writing;

(b) insurance for such amounts as a prudent owner or operator of the Plant would insure for, or such amount as the Owner may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Plant; and

(c) insurance against such other or further risks relating to the Plant as may be required by law, together with such insurance as the Owner may from time to time consider reasonably necessary and advise to the Hirer.

6.5 All insurance policies procured by the Hirer shall be endorsed to provide the Owner with at least 20 working days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Owner's request name the Owner on the policies as a loss payee in relation to any claim relating to the Plant. The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies. The Hirer shall not do or permit to be done anything which could invalidate any of the insurance policies.

6.6 If the Hirer fails to effect or maintain any of the insurances required by these terms and conditions, the Owner shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.

6.7 The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Owner and proof of premium payment to the Owner to confirm the insurance arrangements.

### **7. Servicing and Inspection**

The Hirer shall at all reasonable times allow the Owner, his agents, insurers and sub-contractors to have unrestricted access to the Plant to inspect, test, adjust, repair or replace the same.

### **8. Ground and site conditions**

8.1 The Hirer is deemed to have knowledge of the site or property or land where the Plant is to be delivered and the Hirer warrants that the condition of the site or place of delivery of the Plant is suitable for the use of such Plant.

8.2 If the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Hirer shall supply and lay suitable timbers or equivalent support in a suitable position for the Plant to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.

8.3 Any timber or other material supplied by the Owner is provided solely to assist the Hirer under their duties within Clause 8.2 and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the Plant.

8.4 The Hirer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the site and the Hirer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

### **9. Handling of plant**

9.1 The Hirer shall ensure that the Plant is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions. Any driver, operator or other person supplied by the Owner with the Plant shall be under the direction and control of the Hirer and for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of Clause 12) and the Hirer shall be solely responsible for all claims arising in connection with the operation of the Plant by the said driver, operator or person. The Hirer shall not allow any other person to operate such Plant without the Owner's prior written consent.

9.2 The Hirer shall take such steps (including compliance with all safety and usage instructions relating to the Plant) as may be necessary to ensure, so far as is reasonably practicable, that the Plant is at all times safe and without risk to health when it is being set, used, cleaned or maintained.

9.3 Any driver, operator or other person supplied by the Owner with the Plant shall not operate any other plant or machinery or undertake work other than that for which they are supplied by the Owner unless previously agreed in writing by the Owner and the Hirer.

9.4 The Hirer shall not use the Plant for any unlawful purpose.

### **10. Breakdown repairs and adjustment**

10.1 Any breakdown or the unsatisfactory working of or damage to any part of the Plant must be notified immediately to the Owner in writing. Any allowance or discount for breakdown time will be granted or refused at the Owner's absolute discretion and any claim for the same will only be considered from the time and date at which written notification is received by the Owner.

10.2 The Hirer shall not (except for the changing of flat tyres and repair of punctures) repair, modify or alter the Plant without the prior written permission of the Owner. The changing of any tyres and repair of punctures are however the sole responsibility of the Hirer who should arrange for them to be changed or repaired. The Hirer is solely responsible for all costs incurred in the changing or replacement of any tyre (which must be of an equivalent specification) and the repair

of any puncture. The changing of any tyre or repair of any puncture should be notified to the Owner in writing as soon as possible after its occurrence.

#### **11. Limitation of liability**

11.1 The following provisions set out the entire liability of the Owner (including any liability for the acts or omissions of its employees, agents, sub-contractors and other representatives) to the Hirer in respect of or otherwise in connection with:

- (a) the hire and/or use by the Hirer of the Plant;
- (b) any breach of the Contract;
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

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

11.3 The Owner shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of 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 plant, 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.

11.4 Whenever the Contract (including these Clauses) provides that any allowance is to be made (or at the Owner's discretion may be, and is in fact, made) against hire charges, such allowance shall be the Hirer's sole and exclusive remedy in respect of 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 has not been made.

11.5 For the avoidance of doubt, nothing in these terms and conditions limits or seeks to exclude the Owner's liability for claims of death or personal injury caused by the Owner's negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

11.6 The Owner's total liability to the Hirer in respect of all recoverable losses arising under or otherwise in connection with the Contract or the hiring of the Plant by the Hirer, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall in no circumstances exceed an amount equal to the total hire price paid or payable by the Hirer in respect of the Plant (if the loss is attributable to a particular unit of Plant) or (in all other cases) the Contract in question.

11.7 In the event that the limitation of liability set out in Clause 11.6 is found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable then subject always to Clauses 11.1 to 11.5 (both inclusive), the Owner's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the Contract or the hiring of Plant by the Hirer shall be limited to the amount that the Owner is able to recover in respect of the claim in question under the Owner's then current insurance policy, a copy of which policy shall be provided by the Owner to the Hirer on request.

11.8 Except as set out in these terms and conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.9 This Clause 11 shall survive termination of the Contract however caused.

#### **12. Hirers responsibility for loss and damage**

12.1 For the avoidance of doubt nothing in this Clause limits, restricts or otherwise affects any obligation on the Hirer pursuant to the other Clauses of these terms and conditions including, without limitation, Clauses 4 (delivery in good order and maintenance: inspection reports), 9 (handling of plant) and 10 (breakdown repairs and adjustment).

12.2 The Hirer shall indemnify the Owner against all liabilities, costs, expense, damages and losses (including but not limited to repair, maintenance and full replacement costs, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs calculated on a full indemnity basis and all other reasonable professional costs and expenses) suffered or incurred by the Owner arising out of or in connection with:

- (a) The Owner's breach or negligent performance or non-performance of the Contract;
  - (b) The enforcement of the Contract;
  - (c) Any claim made against the Owner by a third party arising out of or in connection with Contract, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Hirer, its employees, agents or subcontractors;
  - (d) Any claim made against the Owner by a third party for death, personal injury or damage to property arising out of or in connection with the storage, transit, unloading, loading or use of the Plant at any time during the Hire Period or the Owner's breach or negligent performance or non-performance of the Contract; or
  - (e) Any breakdown or loss of or damage caused to the Plant at any time during the Hire Period, but excluding:
    - (i) breakdown or damage caused by the development of either an inherent defect or fair wear and tear;
    - (ii) breakdown, damage or loss arising 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;
    - (iii) breakdown, damage or loss arising 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
    - (iv) breakdown, damage or loss arising after the Plant has been removed from site and is in transit on a highway maintainable at 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.
- 12.3 Where at any time during the Hire Period the Plant is stolen, lost or damaged beyond economic repair (howsoever caused), the Hirer's liability under Clause 12.2(e) alone (without prejudice to the remainder of Clause 12.2) shall be an amount equal to the full replacement value of new Plant of identical specification (notwithstanding that the new Plant may need to be manufactured by and imported from a specialist supplier) or, where that particular Plant is no longer and cannot be produced, new Plant that is of an equivalent specification in all material respects.
- 12.4 If a payment due from the Hirer to the Owner under this Clause 12 is subject to tax (whether by way of direct assessment or withholding at its source), the Owner shall be entitled to receive from the Hirer such amounts as shall ensure that the net receipt, after tax, to the Owner in respect of the payment is the same as it would have been were the payment not subject to tax.
- 12.5 The Hirer's liability under the indemnity in Clause 12.2 is unlimited.
- 12.6 This Clause 12 shall survive termination of the Contract however caused.

#### **13. Notice of accidents and material matters**

13.1 If the Plant is involved in any accident resulting in an 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 a 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 Owner's consent in writing.

13.2 The Hirer shall keep the Owner fully informed of all material matters relating to the Plant.

#### **14. Possession and rehousing, etc.**

14.1 The Hirer shall not, without the prior written consent of the Owner, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Plant or allow the creation of any mortgage, charge, lien or other security interest in respect of it.

14.2 The Hirer shall not, without the prior written consent of the Owner, attach the Plant to any land or building so as to cause the Plant to become a permanent or immovable fixture on such land or building. If the Plant does become affixed to any land or building then the Plant must be capable of being removed without material injury or damage to such land or building and the Hirer shall repair and make good any damage caused by the affixation or removal of the Plant from any land or building and indemnify the Owner against all losses, costs and expenses suffered or incurred as a result of such affixation or removal.

14.3 The Hirer shall not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Owner in the Plant and, where the Plant has become affixed to any land or building, the Hirer must take all necessary steps to ensure that the Owner may enter such land or building and recover the Plant both during the term of the Hire Period and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Owner of any rights such person may have or acquire in the Plant and a right for the Owner to enter onto such land or building to remove the Plant.

14.4 The Hirer shall not suffer or permit the Plant to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Plant is so confiscated, seized or taken, the Hirer shall notify the Owner and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Plant and shall indemnify the Owner on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation.

#### **15. 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.

#### **16. 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 10 and/or 12) 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 10 and/or 12) by giving written notice to the Hirer. If such determination occurs:

- (a) within three months from the commencement of the Hire Period, the Owner (but without prejudice to any of the provisions of Clauses 10 and/or 12) shall pay all transport charges involved, or
- (b) more than three months from the commencement of the Hire Period, the Owner (but without prejudice to any of the provisions of Clauses 10 and/or 12) shall be liable for only the cost of reloading and transport and return transport.

#### **17. Basis of charging**

17.1 Unless otherwise agreed in writing, Plant will be hired on a daily basis without qualification as to hours and the full daily rate will be charged on a daily basis irrespective of the hours worked. No hire charge shall be made for Saturday and/or Sunday even if the Plant is actually worked on these days.

17.2 Unless otherwise agreed in writing, Plant shall be hired out for a minimum of three days (excluding days for travel, assembly or removal of Plant).

17.3 Unless otherwise agreed in writing, no claim will be admitted or allowance or discount given for idle time or stoppages that arise through any causes whatsoever including without limitation those outside the Owner's control, bad weather or ground conditions, breakdown of the Plant (or any other plant, whether the property of the Owner or otherwise), unsatisfactory working, loss or damage. The giving of any allowance or discount shall be granted or refused at the Owner's absolute discretion.

17.4 The Owner may agree in writing that for the purpose of charging only the Plant is off-hire. The Plant shall be off-hire for such period as the Owner agrees save that the Owner may always at any time by written notice (including email) to the Hirer decide to put the Plant back on-hire in which case the Plant is back on hire with immediate effect from such notice. The rate of charge throughout any period of off-hire shall be as agreed between the Owner and Hirer.

17.5 The Hirer shall remain bound by and fully responsible for all of its obligations under this agreement throughout any period in which the Plant is off-hire.

#### **18. Payments**

18.1 All payments, fees, costs and charges due to the Owner under the Contract shall be payable on demand.

18.2 Unless otherwise agreed in writing, hire rates and other charges shall be based on the Owner's price list from time to time.

18.3 Unless expressly stated otherwise, all hire rates and charges quoted by the Owner or otherwise agreed between the parties are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.

18.4 All amounts due to the Owner under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (except as required by law, in which case the amount payable to the Owner shall be increased such that the net amount received by the Owner following deduction or withholding shall be the same as it would have received had no deduction or withholding been required).

18.5 If the Hirer fails to make any payment due to the Owner under the Contract by the due date for payment, then, without limiting any other remedies available to the Owner under these terms and conditions or otherwise, the Hirer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Hirer shall pay the interest together with the overdue amount.

18.6 Any costs and expenses incurred by the Owner in the recovery of money owed to it under the Contract shall be borne and paid by the Hirer.

18.7 If the parties agree that a deposit shall be payable by the Hirer to the Owner, that deposit is a deposit against default by the Hirer of any payments due by the Hirer to the Owner under the Contract or any loss of damage caused to the Plant. The Owner shall be entitled to apply the deposit against any such default, loss or damage. The Hirer shall pay to the Owner any sums

deducted from the deposit within 7 days of a demand for the same. The payment, receipt and application of any deposit is without prejudice to any rights, remedies or claims the Owner may have against the Hirer under or in connection with the Contract. The balance of the deposit shall be refundable within one month of the end of the Hire Period.

#### **19. Plant Commencement and termination of hire (transport of plant)**

19.1 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 that day.

19.2 If the Plant is not made available by the Hirer for the Owner's collection as agreed between the parties, such Plant shall be deemed with immediate effect to be placed back on hire. The Hirer shall continue to be responsible for the safekeeping of the Plant in accordance with these terms and conditions and for all reasonable costs and expenses incurred by the Owner in seeking to collect such Plant.

19.3 Unless otherwise agreed in writing by the Owner, upon the completion of the Hire Period the Hirer shall clean and where necessary decontaminate the Plant. All fuel and contaminants will be removed from bunds, storage tanks and bowsters. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner should the Hirer fail to comply with this Clause.

#### **20. Termination**

20.1 Without affecting any other right or remedy available to it, the Owner may terminate the Contract with immediate effect by giving notice to the Hirer if:

- (a) the Hirer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified to make such payment;
- (b) the Hirer commits a breach of any term of the Contract which in the opinion of the Owner is material and where such breach is remediable is not remedied to the Owner's satisfaction (at no cost to the Owner) within a period of 14 days of the Hirer being notified to do so;
- (c) the Hirer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (d) the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Hirer;
- (h) the holder of a qualifying floating charge over the assets of the Hirer has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Hirer or a receiver is appointed over the assets of the Hirer;
- (j) the Hirer (being an individual) is the subject of a bankruptcy petition or order;
- (k) a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Hirer's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 20.1(a) to Clause 20.1(k) (inclusive);
- (m) the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (n) the Hirer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

20.2 The Contract shall automatically terminate if the Plant is, in the Owner's reasonable opinion or the opinion of its insurers, damaged beyond repair, lost, stolen, seized or confiscated.

20.3 Where the period of hire is indeterminate or having been defined becomes indeterminate the Contract shall be determinable by 7 days' notice in writing given by either party to the other in which case the Contract shall terminate on the later of the end of that 7 days' notice or the date the Plant is received back at the Owner's named depot or other agreed location. Any 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. For the avoidance of doubt, where the Hirer gives a notice pursuant to this Clause but subsequently and with the consent of the Owner withdraws such notice, the Contract terms shall continue to apply and the requirements of this Clause will apply to any later termination of the Contract.

20.4 If the Hirer terminates the Contract before the Hire Period commences then the Hirer shall be liable to the Owner for all reasonable costs, charges and expenses incurred by the Owner or to which the Owner is committed at the time of termination.

20.5 Unless otherwise agreed in writing by the Owner, if the Hirer is an individual, partnership or other unincorporated body and not a limited company, the Contract will terminate not later than 12 months from the commencement of the Hire Period.

#### **21. Consequences of termination**

21.1 Upon termination of the Contract, however caused:

- (a) the Owner's consent to the Hirer's possession of the Plant shall terminate and the Owner may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Plant and for this purpose may enter the site or any premises at which the Plant is located; and
- (b) the Hirer shall pay to the Owner on demand:
  - (i) all payments and other sums due to the Owner under the Contract but unpaid at the date of such demand together with any interest accrued thereon;
  - (ii) all costs and expenses incurred by the Owner in recovering the Plant and/or in collecting any sums due to it under the Contract (including without limitation any insurance, repair, transport and legal costs).

21.2 Upon termination of the Contract pursuant to Clause 20.1, any other repudiation of the Contract by the Hirer which is accepted by the Owner or pursuant to Clause 20.2, without prejudice to any other rights or remedies of the Owner, the Hirer shall pay to the Owner on demand a sum equal to all payments and other sums that would (but for the termination) have been payable by the Hirer to the Owner if the Contract had continued from the date of such demand to the end of the original period of hire.

21.3 The sums payable pursuant to Clause 21.2 shall be compensation in part (without prejudice to Clause 12) for the Owner's loss and shall be payable in addition to the sums payable pursuant to Clause 21.1(b). Such sums may be partly or wholly recovered from any deposit.

21.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

#### **22. 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.

#### **23. Travelling times 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 any other employees of the Owner for the purpose of servicing, repair or maintenance of Plant, unless the need for such servicing, repair or maintenance (as the case may be) arises as a result of the Hirer's negligence, misdirection or misuse of the Plant.

#### **24. 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. The Hirer shall be solely responsible for all damages, losses, costs and expenses suffered or incurred by the Owner if the Hirer uses the wrong fuel, oil or grease.

#### **25. 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.

#### **26. 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.

#### **27. Government regulations**

27.1 The Hirer will be responsible for compliance with relevant laws and 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 Taxes should they apply, including the cost of Road Fund Licences and any insurance 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.

27.2 The Hirer shall indemnify the Owner against all damages, losses, liabilities, charges, fines and costs suffered or incurred by the Owner as a result of the Hirer's failure to comply with Clause 27.1.

#### **28. Protection or owner's rights**

28.1 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 result of any failure to observe and perform this condition.

28.2 The Owner may terminate the Contract with immediate effect by notice to the Hirer if one or more of the following events occur (notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature):

- (a) the Hirer makes default in punctual payment of any sum due to the Owner for hire of Plant or other charges;
- (b) the Hirer fails to observe and perform the terms and conditions of this Contract;
- (c) the Hirer suffers any distress or execution to be levied against him or makes or propose to makes any arrangement with 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
- (d) the Hirer causes to be done or permits or suffers any act or thing whereby the Owner's rights in the Plant may be prejudiced or put into jeopardy.

28.3 In the event of termination under Clause 28.2:

- (a) the Hirer must give the Owner, its agents or sub-contractors, immediate unobstructed access to recover the Plant; and
- (b) the Owner shall be entitled to claim the hire charges outstanding as at the date of termination of the hire under this Clause and return transport charges under these terms and conditions.

28.4 The Owner's rights under this Clause 28:

- (a) may be exercised notwithstanding that the Owner may have waived some previous default or matter of the same or like nature; and
- (b) shall not affect any other rights or remedies available to the Owner including without limitation its rights to claim damages for breach of Contract or recover any sums due under the Contract.

28.5 If the Hirer does not make payment of a sum by the final date on which payment is due to be made, the Owner has the right to suspend performance of its obligations under the Contract. The right to suspend may not be exercised without first giving to the Hirer at least 24 hours notice in writing of the Owner's intention to suspend performance. The right to suspend performance under this Clause 28.5 will cease when the Hirer makes payment in full of the amount due.

#### **29. Severability**

If any of these terms and conditions are held to be unlawful, void or unenforceable, then that clause will be deemed severable and will not affect the validity and enforceability of the remaining clauses, to the extent permitted by law.

#### **30. Assignment**

30.1 The Owner may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

30.2 The Hirer shall not assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

#### **31. Notices**

31.1 The parties agree that service by email or fax is not a valid method of service of any proceedings or other documents in any legal action or any arbitration or other method of dispute resolution in connection with any Contract.

#### **32. Governing Law**

These terms and conditions and each Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.