

## Terms and Conditions for the Hiring of Plant

### 1. Definitions and General:

1.1 The 'Owner' [RJW Machinery Sales Ltd.] is the Company, firm or person letting the Plant, and includes its successors, assigns or personal representatives.

1.2 The 'Hirer' means the company, firm, person or public authority shown on the invoice taking the Owner's Plant on hire and includes their successors or personal representatives.

1.3 'Plant' means all classes of plant and machinery, which the Owner agrees to hire to the Hirer.

1.4 The term 'Owner's Employee' shall mean any employee of the Owner whose job is either to drive or operate the Plant or to provide any other services in connection with the Plant.

1.5 'Advice' means any designs, drawings or specifications in relation to the Plant or any information or advice as to the planning, supervision, or control of the Hirer's operations or the installation of the Plant.

1.6 Hire rates are the Owner's current standard rates, unless otherwise agreed.

1.7 Unless otherwise stated in an exceptional written agreement; Hire Periods are set as; a 'day' being eight (8) hours; a 'week' being seven (7) consecutive days; a 'working week' covers the period from starting time on Monday and finishing time on Friday, and is expected to be a 40-hour, five (5) day week. Additional charges will be made for shift work and weekend work.

1.8 These Terms and Conditions shall apply to the hire of all Plant by the Owner to the Hirer and shall not be overridden by any Terms and Conditions of the Hirer.

1.9 No variation of these Terms and Conditions will be effective unless agreed in writing by a Director of the Owner. All terms other than those expressly set out in these Terms and Conditions are hereby excluded.

1.10 Acceptance of the Plant, in the form of a signed Hire Agreement, by the Hirer, or its delivery on site in accordance with the Hirer's instructions, signifies acceptance of these Terms and Conditions unless otherwise agreed in writing.

1.11 Where the Hirer deals with the Owner as a consumer these Terms and Conditions do not, and will not, affect their statutory rights.

1.12 These Terms and Conditions shall be governed by and construed according to the Laws of England.

**2. Extent of Contract and Basis of Charging:** Unless exceptional written agreement is expressly entered into between the Owner and the Hirer, then the contract is subject only to these Terms and Conditions, and those outlined on the invoice. The Hirer agrees to pay the hire charges which will commence from the time the Plant leaves the Owner's premises or place where last employed, and continue until the Plant is returned to, or collected by, the Owner. The duration of hire will be charged at the Owner's current standard rates, unless otherwise agreed in writing with a Director of the Owner.

**3. Other Charges:** Hire charges relate solely to the hire of the Plant. They do not include fuel, oil and grease supplied with the Plant; carriage to and from the Owner's premises; charges in relation to the supply of an Owner's Employee; or any other costs incurred by the Owner, all of which will be charged separately to the Hirer. When carriage charges are quoted by the Owner, such charges will include a charge for a maximum of 30 minutes attendance by the Owner's vehicle at the address specified by the Hirer. Further time will be paid for by the Hirer.

**4. Payment Terms:** All charges are payable on demand. The Owner shall be entitled to charge interest at the rate of 2% per month from the due date to the date of settlement. Should the Hirer fail to settle any invoice by the due date, other than for a valid reason agreed by the Owner, then all other invoices become payable immediately by the Hirer.

**5. All-In Rates:** All-In Rates apply to all Hire agreements for the minimum period and shall be defined in the Contract and in accordance with the hire rates and Terms therein.

**6. Acceptance of Plant and Responsibility of Persons Signing:** Acceptance of the Plant on site implies acceptance of all Terms and Conditions herein unless otherwise formally agreed in writing. The person signing the Hire Agreement warrants that he has the authority of the Hirer to make the contract on the Hirer's behalf. The Owner shall be entitled to treat the Hirer as contractually bound by these Terms and Conditions unless the Hirer can demonstrate that there were no reasonable grounds for the Owner to believe that such person had authority to bind the Hirer.

**7. Delivery in Good Order:** The person signing the Hire Agreement has been afforded an opportunity to inspect the Plant which is deemed to be in good working order and wholly free from reasonable damage at the time of signature. Any shortages of Plant must be notified to the Owner within 24 hours of the commencement of the hire and confirmed in writing within 72 hours. If the Hirer fails to do this then hire charges will continue and the Hirer will be responsible for the cost of replacing shortages in accordance with Clause 12.

**8. Loading and Unloading the Plant:** The Hirer shall be responsible for loading and unloading the Plant at the Hirer's site, and at the Owner's premises. Any Owner's Employee who helps load or unload the Plant is deemed to be an employee of the Hirer and the provisions of Clause 9 shall apply.

**9. Hirer's Responsibility for Owner's Employees and Third Parties:** When an Owner's Employee is supplied by the Owner with the Plant, the Owner shall supply a competent person but such person shall be under the direction and control of the Hirer. The Owner's Employee shall for all purposes connected with such employment be regarded as the servant of the Hirer who alone shall be responsible for all claims arising in connection with the delivery, preparation or operation of the Plant. The Owner shall have no liability for any loss or damage caused by any act or omission whatsoever of an Owner's Employee or the consequences thereof. The Hirer shall fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or loss or damage to property, howsoever caused, including all costs and charges in connection therewith and arising out of, or in connection with, any act or omission of the Owner's Employee whilst the Hirer is responsible for him and whether or not arising under statute or common law or from the negligence or breach of duty or other wrongful act or omission of the Owner or any of the Owner's Employees.

**10. Wages and other Charges Relating to Owner's Employees:** The Hirer shall pay the agreed hourly rates for each Owner's Employee supplied with the Plant and such rates are payable whether or not the Owner's Employee is actually engaged operating the Plant or providing any other service in connection with the Plant. The Hirer shall sign the time record sheets of the Owner's Employee daily or weekly. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time record sheets. All travelling time and fares for Owner's Employees whether during, at the beginning or the end of the hire period are payable by the Hirer in accordance with the appropriate national agreement.

**11. Advice:** If the Owner or any of the Owner's Employees give any Advice it is provided strictly on the basis that it is for guidance only, and without any responsibility being accepted. The onus is on the Hirer to verify the accuracy and/or appropriateness of such Advice and to accept or reject accordingly. If any such Advice is given it is given on the basis that no legal liability shall attach to the Owner or any of the Owner's Employees. The Hirer shall fully and completely indemnify the Owner and the Owner's Employees against all claims by any person whatsoever for injury to person or loss or damage to property howsoever caused including all costs and charges in connection therewith and arising from the giving of such Advice whether arising under statute or common law or from the negligence or breach of duty or other wrongful act of omission of the Owner or any of the Owner's Employees.

**12. Lost, Non-returned, Damaged or Unclean Plant:** The Hirer must immediately notify both the Owner and the Police of any loss or theft of the Plant. When the Plant is not returned or is returned incomplete the liability of the Hirer shall only cease when the Hirer pays to the Owner the manufacturer's current list price for the missing or incomplete item of Plant. In the event that Plant is manufactured to the Owner's design the cost of the missing or incomplete item is the current price charged by the Owner to a customer who wishes to purchase that item of Plant. The Hirer agrees to pay to the Owner all costs incurred by the Owner in rectifying the condition of the Plant if it is returned damaged unclean or incomplete. Hire charges will continue until such rectification is complete.

**13. Maintenance of Plant and Breakdown Procedures:** The Hirer shall ensure that the Plant remains safe, serviceable and clean. Any breakdown or any unsatisfactory working of Plant must be immediately notified to the Owner. Any claim for breakdown will only be considered from the time and date of notification. The cost and repair of punctures is the full responsibility of the Hirer. With the exception of punctures, the Hirer shall not repair the plant without the written authority of the Owner. The Hirer shall be responsible for all expense involved arising from any breakdown, loss, or damage incurred by the Owner due to the Hirer's negligence, misdirection, or misuse during the Hire Period. The Hirer shall also be subject to the payment of hire at the appropriate idle time rate during the period the Plant is necessarily idle due to such breakdown or damage. Idle time shall be two thirds of the hire rate. A full allowance will be made to the Hirer for any stoppage if it is agreed that the stoppage is due to Plant fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repair in accordance with the Terms of the Contract.

**14. Safe Use of the Plant:** The Hirer confirms that it has the necessary knowledge and experience to operate and use the Plant. The Hirer will not misuse the Plant. The Hirer will not allow any person to use the Plant who is not properly instructed in its use and will ensure that all applicable health and safety rules and regulations are observed. Where the Plant comprises electrical equipment it must be connected to the correct supply by a qualified electrician. The Hirer is responsible for providing a suitable 3 phase and earth supply to the base of each item of Plant.

**15. Fuel, Oil, and Grease:** When supplied by the Owner; fuel, oil and grease shall be charged at net cost, or an estimate of net cost. When supplied by the Hirer, fuel, oil, and grease shall be of the grade and type specified by the Owner.

**16. Owner's Name Plates:** The Hirer shall not remove, deface or cover up the Owner's name plates or mark on the Plant indicating that it is his property.

**17. Sharpening of Drills / Steels / Cutters etc.:** Where appropriate, the cost of re-sharpening shall be borne by the Hirer.

**18. Access and Ground Conditions:** The Hirer is responsible for the provision of free and suitable access to and from the site (including the removal and reinstatement of local obstructions) and for ensuring suitable ground conditions for the erection, operation and dismantling of the Plant. No responsibility will be accepted by the Owner for damage to any surface over which the Plant has been moved to reach its intended position of use and the Hirer should therefore take steps to protect surfaces (paving slabs, soft ground etc.) before delivery of the Plant. The reinstatement of any fixing holes drilled in buildings is the responsibility of the Hirer.

**19. Security of the Plant:** The Hirer shall not sell or otherwise part with possession and/or control of the Plant and shall remain responsible for the Plant and its safekeeping during the hire period. Plant must not be removed without the authority of the Owner from the site specified by the Hirer if the Plant is collected by the Hirer, or from the address to which the Owner has delivered the Plant. The Hirer shall keep the site at which the Plant is located safe and secure.

**20. Consequential Losses:** The Owner shall not be liable for any consequential expenses, liabilities, losses, claims or proceedings whatsoever caused by, or arising out of, the late delivery, non-delivery, unsuitability or repossession of the Plant, or any breakdown or defect in the Plant.

**21. Insurance and Notification of Accidents:** The Hirer shall be responsible for obtaining all prudent insurance cover, including third party liability and cover against loss or damage to the Plant. The Hirer shall produce on demand to the Owner a copy of the policy or policies. The Hirer shall hold on trust for the Owner all policy proceeds in or towards satisfaction of the Hirer's obligations under Clause 12. 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. The Hirer shall not admit any liability or compromise any claim relating to the Plant without the consent in writing of the Owner.

**22. Return of Plant for Repairs:** The Owner may decide that the Plant requires urgent repairs and he may arrange for such repairs to take place on-site or at any location of his nomination. Responsibility for all relevant transport costs relating to such urgent repairs will be determined in accordance with Clause 13.

**23. Multiple Plant Hire Breakdown:** Each item of plant outlined in the Contract is hired as a separate unit and the breakdown or stoppage of one or more unit / vehicles (whether the Owner's property or otherwise) through any cause shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of plant working in conjunction therewith, provided that where two or more items of plant are hired together as a unit, such item shall be deemed a unit for the purpose of breakdown.

**24. Other Stoppages:** No claims will be admitted (other than those allowed under Clause 13) for stoppages outside the Owner's control, including bad weather or ground conditions etc... The Owner shall not be responsible for the cost of or expense of recovering any plant from soft ground.

**25. Right of Access:** The Hirer shall allow the Owner, his Agents or his Insurers access to the Plant at all reasonable times for the purpose of inspection, maintenance, replacement or repossession.

**26. Change of Site:** The Plant shall not be moved from the site to which it was delivered or consigned without the written authority of the Owner.

**27. Re-Hiring, Sub-Letting, Lending of Plant:** The Plant, or any part thereof, shall not be re-hired, sub-let, or lent to any third party without the written permission of the Owner.

**28. Period and Determination of Hire:** If the Hirer is an individual within the meaning of the Consumer Credit Act 1974 the maximum period of hire shall be 3 months. The Owner shall be entitled at any time and for any reason whatsoever and without explanation to terminate with immediate effect the hire contract and to repossess the Plant.

**29. Notice of Termination of Contract:** Where the period of hire is indeterminate, then the Contract shall be determinable by seven days' notice in writing given by either party to the other (except in cases where the Plant has been lost or damaged). In the event of the Hirer wishing to terminate the Contract but failing to give such notice, hire for the period of seven days' notice shall be chargeable at idle time rates in lieu.

**30. Government Regulations:** The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including Regulations under the Factories Acts, Health and Safety at Work Act etc... and observance of the Road Traffic Acts should they apply, including the cost of Road Fund Licenses and any insurances made necessary thereby, save that if and during such time as the Plant is travelling, whether for full or part journey from Owner to site and site to Owner under its own power with a driver supplied by the Owner, the Owner and not the Hirer shall be responsible as aforesaid.

**31. Protection of Owner's Rights:** The Hirer shall protect against distress, execution or seizure and shall indemnify the Owner against all losses, damage, costs, charges, and expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition. If the Hirer make default in punctual payment of all sums due to the Owner for hire of Plant or other charges or shall fail to observe or 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 liquidation or shall do or shall cause to be done or permit or suffer any act whereby the Owner's rights in the Plant may be prejudiced or put at risk, this Agreement will forthwith be terminated (without any notice or other act on the part of the Owner), and it shall then 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.

**32. Enforced Transference of Contract:** In the event of any item(s) 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 there-under, 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(s) to such Employer for the remainder of the period during which such item(s) were hired to the Hirer upon the same Terms in all respects as are herein contained save that notwithstanding the provisions of Clause 31 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.

**33. Invalidation:** Should any of these Terms and Conditions be held to be invalid such invalidation will not affect the validity of the remaining Terms and Conditions.

**34. Arbitration:** If during the continuance of the Contract or at any time thereafter any dispute, difference or question shall arise between the Owner and the Hirer in regard to the Contract or the construction of these Conditions or anything therein contained or the right or liabilities of the Owner or the Hirer such dispute, difference or question shall be referred pursuant to the Arbitration Act 1950, or the Arbitration (Scotland) Act 1894 as the case may be or any Statutory modification thereof, to a Sole Arbitrator to be agreed upon by the Owner and the Hirer and failing agreement to be appointed at the request of either the Owner or the Hirer by the President for the time being of the Institute of Mechanical Engineers.