

TERMS AND CONDITIONS FOR THE HIRING OF PLANT

1 GENERAL

These Terms and Conditions for the hiring of plant apply to and constitute the whole of the terms and conditions of every contract entered into by Roger Bullivant Limited ("we" or "us" or "the Company") with each Owner for the hiring of plant unless otherwise specifically agreed by us in writing signed by one of our directors. A reference to "Owner" is to the company, firm or person letting the plant for hire and includes their successors, assigns or personal representatives. In circumstances where our Purchase Order could be construed as a counter-offer to an offer to supply made by the Owner, any action taken by the Owner to fulfil our Purchase Order shall be deemed for all purposes to constitute acceptance of these Terms and Conditions and to exclude any terms and conditions quoted by the Owner unless otherwise agreed by us in writing as above. None of our employees or agents other than a director of the Company has any authority to vary any of these Terms and Conditions nor to contract with the Owner on the Owner's terms and conditions. Without prejudice to the generality of the foregoing, the Construction Plant-hire Association model conditions do not apply and are hereby excluded.

2 AUTHORISATION

We accept no liability whatsoever and will not pay for the hire of any plant supplied to us otherwise than against and in strict conformity with our Purchase Order duly signed by an authorised representative of the Company. These Terms and Conditions supersede any previous oral or written indications of our intentions with regard to any proposed hire of plant to us.

3 OWNER'S REPRESENTATIONS AND WARRANTIES

Without limitation to any other representations, warranties or obligations, the Owner represents and warrants to the Company that, as a minimum:

- 3.1 In performing its obligations and supplying the plant pursuant to the Purchase Order, the Owner will exercise good industry practice.
- 3.2 The plant is in good condition and good working order, free from defects, fit for any intended uses expressly or impliedly made known to the Owner by the Company.
- 3.3 It shall carefully test and inspect the plant before delivery to the site, and shall repair and/or replace any plant within 24 hours of notice by the Company of a breakdown or the unsatisfactory working of the plant.
- 3.4 It will, at no extra cost to the Company, carry out all such inspection, testing and quality control and/or quality assurance procedures that are necessary to ensure that the plant will comply with the Purchase Order.
- 3.5 The plant conforms with all standards referred to on any part of the plant and in any documentation with or in relation to which the plant is supplied or ought reasonably to be supplied.
- 3.6 The plant complies with all performance and other specifications stated in the manufacturer's specification, operation and user manuals, and all applicable legislation for the time being in force, including where applicable all relevant Construction Products Regulations and the Construction (Design Management) Regulations 2015.
- 3.7 It will notify the Company as soon as it is aware of any potential or actual delays or obstacles to the performance of the Owner's obligations under the Purchase Order and/or of any matter which could delay the works being carried out for which the plant is hired.
- 3.8 Any Owner personnel supplied for the operation and/or maintenance of the plant shall act in a proper, professional and efficient manner and as a minimum shall exercise all the reasonable skill, care and diligence to be expected of a suitably qualified and/or competent and experienced member of their profession, and shall have a duty of care to adhere to all health and safety requirements of the Company or the site management team. The Owner personnel is required and shall be deemed to have read and understood the Risk Assessments and Method Statements and shall notify the Company immediately if either document is in contravention of the plant's normal operating procedure.
- 3.9 For non-operated plant hire, the Owner should ensure that a thorough familiarisation check has been carried out with the Company. Acceptance of the plant shall not be deemed to have taken place until this has been completed unless we have arranged with the Owner that there will be an operative on site to receive the plant and that operative is not on site.
- 3.10 It shall be responsible for the delivery and collection of the plant and whilst the Company shall be responsible for unobstructed access and egress for unloading and loading of the plant, the Company shall have no liability for any loss and damage arising out of and/or in connection with any default, omission, or failure of the Owner, the Owner's personnel or any other party engaged by the Owner in connection with the loading/unloading of the plant at the site.
- 3.11 All items of plant supplied to us on hire must be capable of being securely locked. If the plant cannot be securely locked, the Owner of the plant shall retain risk of theft of the plant for the duration of the hire period.

4 DELIVERY AND ACCEPTANCE OF PLANT

- 4.1 The Owner shall deliver and collect the plant on the dates and times specified in the Purchase Order. Time is of the essence as to the delivery and collection of the plant. If the Owner does not comply with its obligations in this clause 4, the Company may, without prejudice to any other rights or remedies that it may have, terminate the Purchase Order in whole or in part without incurring any liability to the Owner, and/or refuse to accept any subsequent delivery of items comprised in the plant which the Owner attempts to make, and/or hold the Owner accountable for any loss and damage incurred.
- 4.2 The Owner may access the plant for servicing, inspection, testing, adjustment or replacement during the hire period, provided that sufficient notice is provided to us in writing. Whether such notice shall be considered as sufficient will depend on what is reasonable in the circumstances, but in any event shall be no less than 3 working days. We reserve the right to refuse such access where such notice is not provided.
- 4.3 The plant shall not be moved from the site to which it was delivered or consigned without the prior permission of the Owner.

5 PRICE

Unless otherwise stated on our Purchase Order or agreed in writing, the price stipulated on our Purchase Order is a fixed price for the hire of the plant and includes the cost of delivery to or at the stated destination or site. No extra charge or price increases of any description will be accepted by us without our agreement thereto in writing being obtained by the Owner before delivery of the plant.

6 PAYMENT

- 6.1 The "Hire Period" shall commence from the time the plant is delivered and accepted on the site by the Company or the date on which we stipulate in our Purchase Order as the commencement of the hire period whichever is later and ends within 1 working day of our notice to off hire being issued to the Owner. Such notice can be issued verbally by the Company provided that it is subsequently confirmed in writing (by post or e-mail) within 24 hours. Plant off-hired before 10am shall be considered off hired on that calendar day.
- 6.2 Our liability to pay hire charges is limited to the Hire Period.
- 6.3 The Owner shall be entitled to payment for any hire charges on a monthly basis during the Hire Period and may submit invoices no more frequently than each calendar month. We will make payment against such invoices at the end of the second month following receipt of the Owners invoice. In order to ensure payment accordingly, the Owner must (a) send an accurate invoice in duplicate to the invoicing address of our Area Office which issued the corresponding Purchase Order, and (b) quote on such invoices the reference number of the Purchase Order concerned. Failure by the Owner to comply with these requirements renders the invoice invalid.
- 6.4 Fuel, oil and grease shall, when supplied by the Owner, be included in the price agreed in the Purchase Order. Where supplied by the Company, the fuel, oil or grease shall be of a grade or type specified by the Owner.
- 6.5 Unless otherwise agreed in writing, travelling time and/or expenses of operators provided/ supplied by the Owner shall be deemed to be included in the agreed hire rates for the plant.

7 BREAKDOWN, REPAIRS AND ADJUSTMENT

- 7.1 Any breakdown or the unsatisfactory working of or damage to any part of the plant shall be notified as soon as reasonable to the Owner. Our liability to pay hire shall cease for any period of time exceeding one hour during which the plant is not available for use by reason of breakdown or unsatisfactory working of or damage to the plant and shall not resume until the plant is once more functional - unless the failure is caused by the proved negligence of our employees, agents or contractors. Each hour of off-hire shall result in our being relieved of liability for one eighth of one day's hire on the basis of a five day working week, and pro-rata for part of an hour.
- 7.2 We shall not repair, modify or alter the plant without the prior written permission of the Owner. The Owner shall be responsible for the cost of replacement of any part required due to wear and tear (including without limitation the replacement of worn tyres due to wear and tear).
- 7.3 We shall be responsible for expenses arising from any breakdown or the unsatisfactory working of the plant due to the negligence, misdirection or misuse of the plant by the Company.

8 CANCELLATION

- 8.1 We shall always have the right to cancel a Purchase Order for the hire of plant in circumstances where in our reasonable opinion the Owner will be materially unable to fulfil his or its part of the Purchase Order. In these circumstances we may at our option either retain and pay for on a pro rata basis any plant, or the benefit of any service, which have by that time been supplied to us or reject the same in which case, insofar as plant is concerned, the Owner must promptly repossess the plant in question.
- 8.2 If any plant supplied to us on hire is in our opinion in any material way unsuitable for any purpose for which it is intended to be used, we may at our sole discretion cancel the relevant contract of hire by giving notice in writing of such cancellation with immediate effect and thereby terminate our liability to pay hire. On receipt of such notice the Owner must promptly repossess the plant in question.

9 ASSIGNMENT AND SUB-CONTRACT

- 9.1 The Owner is not permitted under any circumstances to assign, transfer or sub-contract any part of a contract for the hire of plant without our specific written agreement obtained before the assignment, transfer or sub-contracting is carried out.

- 9.2 Neither the plant nor any part thereof shall be re-hired, sub-let or lent to any third party without the permission of the Owner.

10 CONFIDENTIALITY

- 10.1 Our Purchase Order and the subject matter thereof are strictly private and confidential between ourselves and the Owner and shall not be disclosed to any third party whatsoever without our prior written consent.
- 10.2 The use by any Owner of our name for advertising or publicity purposes is prohibited without our prior written consent.
- 10.3 Any drawings, patents, patterns, detail or information of any kind provided by us to any Owner shall always remain our property, shall be held on trust for us by the Owner, and must be returned to us immediately on demand at the cost of the Owner. No Owner will make any such material available in any way, shape or form to any third party without our prior written consent. Any subsequent use by any Owner for the benefit of his own business of any material which we provide to him for the purposes of our business is prohibited without our prior written consent. Any unauthorised use of any such material will, in addition to the exercise of our rights, lead to a claim by us against the Owner concerned for an account of any profits thereby derived.

11 INSURANCE AND INDEMNITY

- 11.1 We will be responsible for maintaining insurance of the plant during the Hire Period. The Owner of plant will be otherwise responsible for the insurance of the plant.
- 11.2 The Owner shall maintain Public Liability insurance, Employer's Liability insurance, and insurance of the plant outside of the Hire Period.
- 11.3 The Owner undertakes to indemnify us in full against any and all liability, loss, damage, claims, costs, fines and expenses whatsoever which we may incur in respect of (a) physical injury to any person or loss of or damage to any property or any other loss or damage arising out of or connected with any defect whatsoever in the plant supplied to us by the Owner, or otherwise flowing from any breach by the Owner of any statutory or other legal duty or caused directly, irrespective of whether or not by negligence, by the acts or omissions of the servants, agents or contractors of the Owner, and (b) any failure by the Owner to comply with his obligations as set out in these Terms and Conditions. For the avoidance of any doubt the indemnity provided by the Owner shall include liability for indirect, consequential or economic loss as incurred by us on our own part or for which we may be liable to a third party.
- 11.4 The Company's total liability to the Owner shall not exceed the total of the hire charge under the Contract, unless and to the extent caused directly by the negligent actions of the Company in which case the Company's total liability to the Owner shall not exceed the lower of the cost of repair or replacement of the plant in question.

12 FORCE MAJEURE

We may defer the delivery date, cancel the Purchase Order or reduce the amount of plant ordered by notice to the Owner in writing, if we are prevented from or delayed in carrying on our business by acts, circumstances, events, omissions or accidents beyond our reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport or telecommunication network, epidemic, pandemic, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13 STATUTORY AND OTHER SIMILAR REQUIREMENTS

It is a condition of the Purchase Order that all plant supplied by the Owner shall comply and shall continue to comply with all the provisions and requirements applicable to the design, manufacture, supply, and/or use of the plant concerned, imposed, whether expressly or by implication, by common law or by any statute, statutory instrument, order, directive or regulation in force in the United Kingdom at the time of delivery.

14 INSOLVENCY

- 14.1 If in our opinion it is reasonably clear that any Owner with whom we are dealing is trading while being unable to pay his or its debts we shall be entitled, without incurring any liability whatsoever to that Owner, to cancel any Purchase Order or contract which we may then have with that Owner for the supply to us of plant.
- 14.2 In the event that any Owner with whom we are dealing becomes bankrupt, or goes into liquidation, or goes into administration, or gives notice of intention to appoint administrators, or has an administrative receiver appointed over its assets then; a) we shall be entitled at any time to terminate any and all Purchase Orders or contracts for the supply by that Owner of plant to us; and b) no further payment of hire charges shall be due for the hire of such plant until the loss and or damage caused to us as a consequence of such events and/or the termination of the Purchase Order(s) or contracts has been finally determined.
- 14.3 Further, in such circumstances we have the admitted contractual right to set-off against any sums or amounts due or owing by us to the Owner any sums or amounts or claims, whether liquidated or unliquidated, owing by the Owner to us. In the event that the process of set-off produces a balance in favour of the Owner the payment by us of that balance shall operate to provide for all purposes with a full and complete discharge of all obligations owed by us to the Owner.

15 GOVERNING LAW

All Purchase Orders or contracts between the Company and the Owner for the supply of plant shall be subject to and constructed in accordance with English law, and all disputes of claims arising out of or connected with all such contracts, their interpretation and their implementation shall be subject to the exclusive jurisdiction of the English courts.

16 NON-WAIVER

No waiver by us on any occasion or occasions of any one or more of our rights against any Owner shall under any circumstances whatsoever constitute or be deemed to constitute a waiver of any of our other rights or of the right concerned on any other occasion.

17 SEVERABILITY

If any of these clauses 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.