

## **BUKO Traffic & Safety is a trading name style of Road Traffic Solutions Limited**

- Registered address: 60-64 Oswald Road, Scunthorpe, DN15 7PQ
- Company Registration Number: 05008552 • VAT Number: 836 5935 90

# **TERMS & CONDITIONS OF HIRE**

## **1. Definitions and General**

1.1 a) The “Contract” is the Contract between the Owner and the Hirer for the hire of Plant or service(s), which incorporates the Offer and is governed by these conditions. 1.2 The Owner means Road Traffic Solutions Limited and includes the successors or assigns and representatives.

1.3 The “Hirer” is the Company, firm, person, Corporation or public authority taking the Owner’s Plant on hire and/or receiving the service(s) provided and includes their successors or personal representatives.

1.4 “Plant” covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefor, which the Owner agrees to hire to the Hirer, or anything which is supplied by the Owner to effect the hire and/or service, and anything supplied by the Owner for the safe operation and routine inspection and maintenance of the Plant.

1.5 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. For the avoidance of doubt the Hire Period includes the time Plant is left on site during a Holiday Period.

1.6 “Holiday Period” covers any cessation of work over Easter, Christmas and the New Year; as well as any other Bank or Public holidays.

1.7 “Offer” is the Owner’s offer to hire the Plant and/or provide the service(s) to the Hirer which will include details of the Plant to be hired and/or service to be delivered, the Hire Period, relevant hire rates and charges and any supplementary conditions to be incorporated into the Contract.

1.8 A “Working Day” shall be from 8.00 am to 4.30 pm, Monday to Thursday, and 8.00 am to 3.30 pm, on Friday allowing a half-hour lunch break each day, unless otherwise specified in the Contract.

1.9 A “Working Week” covers the period from 8.00 am on Monday to 3.30 pm on Friday, unless otherwise specified in the Contract.

1.10 Hire rates are the Owners current standard rates unless otherwise agreed, by quotation or as in Contract specification.

1.11 Rates are based upon 7 days minimum hire unless otherwise specified in writing.

1.12 These terms and conditions shall apply to the supply and provision of service(s) and/or hire of plant by the Owner to the Hirer and shall not be overridden by any terms and conditions of the Hirer.

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

1.14 Acceptance of the equipment on site and/or delivery of service by the Hirer in accordance with the Hirer’s instructions signifies acceptance of these terms and conditions unless otherwise agreed in writing.

1.15 Where the Hirer deals with the Owner as a consumer these terms and conditions do not and will not affect his statutory rights.

1.16 These terms and conditions shall be governed by and construed according to the laws of England.

## **2. Extent of Contract**

No terms, conditions or warranties other than as specifically set forth in the Offer shall be deemed to be incorporated 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 or delivery of any service(s) pursuant to the Offer. This excludes all other terms or conditions which the Hirer may seek to apply under any order or acknowledgement or acceptance or similar document and supersedes all prior negotiations, representations or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by the Owner. The Owner and the Hirer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract, 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. Basis of Charging**

Charging for the hire period will commence in accordance with clause 1.5, unless otherwise in agreed in writing. In any instance, upon any such agreement with the hirer it is accepted by the hirer to that all such agreements shall be in line with the terms and conditions of the owner.

Telephone off-hires will not be accepted unless validated by an off-hire number notified by the Owner to the Hirer in writing. Delivery and collection costs will apply unless otherwise specified. All chargeable items shall be paid by the Hirer at the rates set out in the Contract 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 Owner's statutory contribution shall be charged as additions at cost by the Owner and shall be admitted and paid by the Hirer.

Travelling time, fares and similar expenses for drivers, operators and any person supplied by the Owner, 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. No charge shall be made by the Owner for any such expenses incurred by other employees of the Owner for the purpose of servicing, repair or maintenance of Plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the Plant.

### **A) PLANT HIRED NOT AS PART OF A SERVICE ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS**

The full daily rate will be charged on a daily basis irrespective of the hours worked except in the case of breakdown for which the Owner is responsible, when the actual hours worked will be charged pro rata of the average Working Day. No hire charge shall be made for Saturday and / or Sunday unless the Plant is actually worked.

### **B) PLANT HIRED NOT AS PART OF A SERVICE BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS**

The weekly or monthly rate shall be charged irrespective of the number of hours worked, except in the case of breakdown for which the Owner is responsible when an allowance pro rata of the agreed weekly rate or pro rata of the agreed monthly rate will be made for each full Working Day broken down calculated to the nearest half Working Day.

### **C) PLANT HIRED NOT AS PART OF A SERVICE BY THE WEEK OR THE HOUR FOR A MINIMUM OF 39 HOURS PER WEEK**

The full hire for the minimum period in the Contract will be charged and an additional pro rata charge will be made for hours worked in excess of such minimum period. Allowance will be made for breakdowns up to 8 hours except on Fridays when the allowance will be up to 7 hours providing always that where the actual hours worked are in excess of the minimum period less breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. The minimum Working Week of 39 hours shall be reduced by 8 hours Monday to Thursday and 7 hours Friday for each Holiday Period occurring in such Working Week, provided that the Plant is not in use during such Holiday Period.

### **D). “ALL-IN” RATES**

Where “All-In” rates are charged by agreement the minimum period shall be as defined in the Contract and in accordance with the hire rates and terms contained therein, subject to the provisions of clause 3

## **4. Payment Terms**

All charges are payable on demand with the exception that payment terms for authorised credit customers up to and including the value of their credit limit are 30 days net from the date of invoice unless otherwise agreed in writing.

The Owner shall be entitled to charge interest at the rate of 5% per month above the national interest rate from the due date to the date of settlement. Should the Hirer fail to settle any invoice by the due date then all other invoices become payable immediately by the Hirer. The Owner reserves the right to charge the Hirer for the late payment of any outstanding invoices under the late payment of commercial debt (interest) act 1992 or any subsequent legislation.

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

Cancellation:

The Hirer may cancel a job at any point before time of commencement. Any third-party costs incurred by the Owner up to and including the time of the cancellation will be passed on to the Hirer. In addition;

- If the Hirer cancels a job within 24 hours of the commencement time, 100% of the job cost will apply.
- If the Hirer cancels between 24 and 120 hours before the job commencement time, 75% of the job cost will apply.
- If the Hirer cancels between 120 hours and 336 hours before the commencement time, 50% of the job cost will apply.

Any dispute or challenge to demand for payment of an invoice shall be noted in writing to the Owner within 14 days of the demand of the payment.

## **5. Responsibility for Owner’s Employees**

When an Owner’s Employee is supplied by the Owner with the Equipment, 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 consequence 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 Owners 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 Employee's.

## **6. Advice**

If the Owner or any of the Owner's Employee's 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 Employee's.

The Hirer shall fully and completely indemnify the Owner and the Owner's Employee's 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 Employee's.

## **7. Responsibility of Persons Signing**

The person signing overleaf warrants that they have 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.

On arrival at a designated site when none of the Hirer's representatives are present to sign the paperwork, we will accept the Hirer's order reference as acceptance of the hire terms and conditions.

## **8. Delivery in Good Order**

Once the Equipment has been accepted on site by the Hirer, they shall be deemed to be in good working order, fit for purpose and wholly free from damage at the time of delivery. The Owner will have no liability for any fault which may be found in the Equipment which is outside the knowledge, control or foreseeability of the Owner.

Any shortage of Equipment must be notified to the Owner in writing within 24 hours of the commencement of the hire. If the Hirer fails to do this the hire charges will continue to be incurred and the Hirer will be responsible for the costs of replacing shortages in accordance with paragraph 11.

## **9. Unloading and Loading**

The Hirer shall be responsible for the unobstructed access and egress and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site; and any personnel supplied by the Owner for such unloading and / or loading shall be deemed to be under the direction and control of the Hirer.

Such personnel shall for all purposes in connection with their employment in the unloading and / or loading of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 12) who shall be solely responsible for all claims arising in connection with unloading and / or loading of the Plant by, or with the assistance of, such personnel.

## **10. Servicing and Inspection**

The Hirer shall at all reasonable times allow the Owner, his agents or his insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Hirer shall allow such access during the Working Day.

## **11. Ground and Site Conditions**

- (a) The Hirer is deemed to have knowledge of the site or the 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.
- (b) If, in the opinion of the Hirer, 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.
- (c) Any timber or other material supplied by the Owner is provided solely to assist the Hirer under their duties and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the Plant.
- (d) 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.

For the avoidance of doubt the Hirer is responsible for the site being available for the setting up of the Equipment within the stated times agreed with the Local Authority and that the site is free from any obstruction preventing compliance thereof and will indemnify the Owner fully against any consequential loss of any kind whatsoever including penalties that may be incurred by them due to their failure to do so.

Should the Owner be required to make the site available for the setting up of the Equipment, they need only to use their best endeavours to make certain that the site is available and there will be no liability upon the Owner's for any consequential loss of any kind whatsoever, including the imposition of penalties that may be incurred by their failure to do so.

## **12. Handling of Plant**

(a) When a driver or operator or any person is supplied by the Owner with the Plant, the Owner shall supply a person competent in operating the Plant or for such purpose for which the person is supplied and such person shall be under the direction and control of the Hirer. Such drivers or operators or persons shall 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 the provisions 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 drivers / operators / persons.

(b) The Hirer shall not allow any other person to operate such Plant without the Owner's prior written consent.

(c) Such drivers or operators or persons 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 between the Owner and the Hirer.

The Hirer confirms that it has the necessary knowledge and experience to operate and use the Equipment. The Hirer will not misuse the Equipment. The Hirer will not allow any person to use the Equipment who isn't properly instructed in its use and will ensure that all applicable health and safety rules and regulations are observed. The Owner accepts no risk of liability or responsibility for any consequential loss or damage howsoever caused to the Hirer via any third party as a result of a failure by or on behalf of the Hirer to comply with the terms of this Clause.

## **13. Lost, Non-Returned, Damaged or Unclean Equipment**

The Hirer must immediately notify both the Owner and the Police of any loss or theft of the Equipment. When the Equipment is not returned or is returned incomplete the liability of the Hirer shall only cease when the Hirer pays to the Owner the manufacturers current list price for the missing or incomplete item of Equipment. In the event that the Equipment 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 Equipment.

The Hirer agrees to pay the Owner all costs incurred by the Owner in rectifying the condition of the Equipment if it is returned damaged unclean or incomplete. Hire charges will continue until such rectification is complete.

## **14. Maintenance of Equipment and Breakdown Procedures**

(a) Any breakdown or the unsatisfactory working of or damage to any part of the Plant must be notified immediately to the Owner, and confirmed in writing. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by the Owner.

(b) Full allowance for the hire charges set out in the Offer will be made to the Hirer for any stoppage due to breakdown of the Plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of the Contract.

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

(d) The Hirer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Plant due to the Hirer's negligence, misdirection or misuse of the Plant, whether by the Hirer or his servants, and for the payment of hire at the idle time rate as defined in clause during the period the Plant is necessarily idle due to such breakdown, unsatisfactory working or damage. The Hirer is responsible for the cost of spares and / or repairs due to theft, loss or vandalism of the Plant. The Owner will be responsible for the cost of repairs, inclusive of the cost of spares, to the Plant involved in breakdown from all other causes.

## **15. Security of Equipment**

The Hirer shall not sell or otherwise part with possession or control of the Equipment and shall remain responsible for the Equipment and its safekeeping during the hire period. Equipment must not be removed without the authority of the Owner from the site as specified by the Hirer if the Equipment is collected by the Hirer or from the address to which the Owner has delivered the Equipment.

The Hirer shall keep the site at which the Equipment is located safe and secure and shall indemnify the Owner fully against any consequential loss suffered by the failure to do so. If the Hirer called in an off hire and has left Equipment at a site location, the Hirer will be responsible for the Equipment until the Owner reaches the site within an 8-hour window.

## **16. Hirer's Responsibility Third Parties**

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 from or in connection with the use of the Equipment and whether or not arising under statute or common law or from negligence or breach of duty or other wrongful act or omission of the Owner or any of the Owner's Employee's.

## **17. Consequential Losses**

- a) The Owner accepts no liability or responsibility for any consequential loss or damage howsoever caused or incurred.
- b) 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 of any equipment or person, for any of the Hirer's loss of profit, loss of use of the Equipment or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature.
- c) In particular and for the avoidance of doubt, the Owner shall not be responsible and incur any liability for breaches of permits issued under Section 74 which are occasioned by circumstances

beyond their control and beyond the use of reasonable endeavour to mitigate those circumstances, and in this regard these terms and conditions will take priority and negate any clause to the contrary that may be included in any contract between the Owner and the Hirer.

d) For the avoidance of doubt, nothing in these 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.

## **18. Insurance and Notification of Accidents**

The Hirer shall be responsible for obtaining all appropriate insurance cover, including third party liability and cover against loss or damage to the Equipment. 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 as detailed above.

If the Equipment 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 Equipment without the consent in writing of the Owner, and any admission of liability or compromise reached with a third party or parties in the absence of such written consent shall not bind the Owner. In those circumstances the Hirer shall in the event of any consequential loss of whatsoever nature and resulting there from, fully indemnify the Owner against that consequential loss.

a) Where the Hire Period is indeterminate or having been defined becomes indeterminate the Contract shall be terminable by seven days notice in writing given by either party to the other except in cases where the Plant has been lost or damaged. Notwithstanding that the Owner may have agreed to accept less than 7 days notice of termination, the Hirer's obligations under clause 13 shall continue until the Plant is returned to the Owner in accordance with clause 26 or until the Owner has collected the Plant within the 7 days following the acceptance of short notice. Oral 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.

b) Without prejudice to clause 18(a), should the Hirer fail to make the Plant available for collection by the Owner before the end of the 7 day notice, the Hirer's obligations under clause 13 shall continue for a further 3 days or until such time as the Plant is made available for collection and the Owner has collected the Plant. For the avoidance of doubt, where the Hirer gives a notice pursuant to clause 18(a) but subsequently and with the consent of the Owner, withdraws such notice, the obligations of clause 13 shall continue to apply and the requirements of clause 18 will apply to any later termination of the Contract.

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

## **19. Period and Determination of Hire**

If the Hirer is an individual within the meaning of the Consumer Credit Act 1974 (as amended by subsequent legislation), 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 Equipment.

## **20. Right of Access**

The Hirer shall allow the Owner access to the Equipment at all reasonable times for the purpose of inspection, maintenance, replacement or repossession.

## **21. Indemnification**

Should any issue be notified or statutory notice served on the Company/Main Contractor by the local authority that has issued the Permits/Licences enabling and authorising the contracted works to be carried out by the Company/Main Contractor through their sub-contractors (RTS) in respect of the said contracted works, details of the issue (whatever it may be) or the statutory notice shall be served but the sub-contractor will not be liable for such costs, compensation or penalty that may be charged on the Company/Main Contractor as a consequence of the said issue/s or said notice. The Company/Main Contractor irrevocably authorises the sub-contractor (RTS) to discuss and negotiate directly on their behalf with the local authority granting any Permit/Licence for the contracted works in the event of any issue or statutory notice that arises as is served by the local authority and notified as required above.

This authority is confirmed upon the signing and dating of any Agreement entered into by the Company/Main Contractor and the sub-contractor (RTS) and the failure to confirm this authority will absolve the sub-contractor (RTS) of any responsibility and liability for any losses including penalties that may arise from any breach of the said Consents/Licences.

Should the said local authority referred to not accept the said authority granted above, the sub-contractor (RTS) will accept no responsibility or liability for any losses or penalties that may arise from any breach of Consent/Licence and will not indemnify the Company/Main Contractor in respect thereof.

## **22. 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.

## **23. 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 incurred by the Owner if the Hirer uses the wrong fuel, oil or grease.

## **24. Sharpening of Drills/Steels etc.**

The cost of re-sharpening or replacement of drill bits, blades and other ancillary items shall be borne by the Hirer.

## **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, without the prior written permission of the Owner.

## **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 the Owner's named depot or other agreed location on completion of the Hire Period.

## **27. Government Regulations**

- a) The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work, etc. Act and observance of the Road Traffic Acts should they apply, including the cost of road fund licences 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.
- b) The Hirer shall indemnify the Owner against any charges or fines that the Owner may become liable for as a result of the operation of the Plant during the Hire Period.

## **28. Protection of Owners Rights**

- (a) The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant except as provided under clause 15 and shall protect the same against distress, execution or seizure and shall indemnify the Owner against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition.
- (b) The Owner may terminate the Contract forthwith by written notice to the Hirer if one or more of the following events occur:
  - (i) The Hirer defaults in punctual payment of any sum due to the Owner for hire of Plant or other charges payable pursuant to these conditions;
  - (ii) The Hirer fails to observe and perform the terms and conditions of the Contract;
  - (iii) The Hirer suffers, or the Owner reasonably believes that the Hirer shall suffer, any distress or execution to be levied against him;
  - (iv) The Hirer makes or proposes to make any arrangement with his 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
  - (v) The Hirer does or causes to be done or permit or suffer any act or thing whereby the Owner's rights in the Plant may be prejudiced or put into jeopardy.
- (c) In the event of termination under sub-paragraph (b) above:
  - (i) The Hirer must give the Owner or his agents, immediate unobstructed access to recover the Plant.
  - (ii) 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 clause 31.
- (d) The rights under sub-paragraph (b) and (c) above:
  - (i) May be exercised notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature.
  - (ii) Shall not affect the Owner's right to claim damages for breach of Contract or recover any sums due under the Contract as a debt.

(e) 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 7 days notice in writing of the Owner's intention to suspend performance, stating the ground or grounds on which the Owner intends to suspend performance. The right to suspend performance will cease when the Hirer makes payment in full of the amount due.

## **29. Dispute Resolution**

(a) If the site is situated within the United Kingdom, then the court whose jurisdiction covers the site will have exclusive jurisdiction and interpretation of the law for this Contract. If the original site is not situated within the United Kingdom, then the relevant jurisdiction and interpretation of the law of the Contract will be governed by the country where the Owner's head office is located.

(b) Both parties to the Contract have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or any amendment or re-enactment thereof for the time being in force) will apply. The person (if any) specified in the Contract to act as adjudicator may be named in the Offer. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being.

(c) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement (and / or, under Scots law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement or deduction. Where, under Scots law, the Owner, the Hirer, or the adjudicator, wishes to register a decision of the adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.

## **30. Late Payments**

The Owner reserves the right to charge the Hirer for the late payment of any outstanding invoices under the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent legislation.

## **31. 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.

## **32. For the avoidance of doubt these Terms and Conditions will take precedence over and above any conflicting clause to the contrary in any contract between the Hirer, Owner and/or third party.**

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