

Weighwell Engineering Ltd- Terms and Conditions of Hire

1. Definitions

- (a) The "Owner" is the Company, firm or person letting the plant on hire and includes their successors or personal representatives.
- (b) The "Hirer" is the Company, firm, person, Corporation or public authority taking the owner's plant on hire and includes their successors or personal representatives.
- (c) "Plant" covers all classes of plant, machinery, vehicles, equipment and accessories, which the Owner agrees to hire to the Hirer.
- (d) 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.
- (e) A "Consumer Contract" is a contract entered into with a person acting in their own capacity and not for or on behalf of any business or trade entity.

2. Extent of Contract

No conditions other than specifically set forth in the Offer and Acceptance and 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 pursuant to the Offer and Acceptance. The Contract does not create any right enforceable by or purport to confer any benefit on any person or party to it.

3. Acceptance of Plant

Acceptance of the plant on site implies acceptance of all terms and conditions herein unless otherwise agreed in writing.

4. Unloading and Loading

The Hirer shall be responsible for the unobstructed access 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 (without prejudice to any of the provisions of Clause 13) who alone shall be responsible for all claims arising in connection with unloading and/or loading of the plant by or with the assistance of such personnel.

5. Delivery In Good Order and Maintenance: Inspection Reports

- (a) Unless notification in writing to the contrary is received by the Owner from the Hirer in the case of plant supplied and delivered to the site within three working days, the plant shall be deemed to be in good order (save for either an inherent fault or a fault not ascertainable by reasonable examination) and in accordance with terms of the Contract and to the Hirer's satisfaction. The Hirer shall be responsible for its safe keeping, use in a workmanlike manner within the manufacturer's rated capacity and return on the completion of the hire in equal good order (fair wear and tear excepted).
- (b) The Hirer shall when hiring plant without the Owner's technicians take all reasonable steps to keep themselves acquainted with the state and condition of the plant. If such plant is continued in operation/work or used in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising there from.

(c) The current 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 hire.

6. Servicing and Inspection

The Hirer shall at all reasonable times allow the Owner, their Agents or their Insurers to have access to the plant to inspect, test, adjust, repair or replace the plant. So far as reasonably possible, such work will be carried out at times to suit the convenience of the Hirer.

7. Timber Mats Or Equivalent

If the ground (including any private access road or track) is soft or unsuitable for the plant to be transported over without timbers or equivalents the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the plant to be transported over. This includes for the purpose of delivery and collection.

8. Handling of Plant

When a technician is supplied by the Owner with the Plant, the Owner shall supply a person competent in operating the plant and such person shall be under the direction and control of the Hirer. The Hirer shall not allow any other person to operate such plant without the Owner's previous consent to be confirmed in writing.

9. Breakdown, Repairs and Adjustment

(a) When the plant is hired without the Owner's technicians any breakdown or the unsatisfactory working of any part of the plant must be notified immediately to the Owner. Any claim for breakdown time will only be considered from the time and date of notification.

(b) Full allowance for the hire charges and for the reasonable cost of repairs that have been authorised by the Owner will be made to the Hirer for any stoppage due to breakdown of plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear in accordance with the terms of the Contract.

(c) The Hirer shall not, repair the plant without the written authority of the Owner.

(d) The Hirer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner due to the Hirer's negligence, misdirection or misuse of the plant, whether by the Hirer or their servants and for the payment of hire during the period the plant is necessarily idle due to such breakdown, loss or damage. The Hirer is responsible for the cost of replacement parts and/or repairs due to theft, loss or vandalism of the plant.

10. Other Stoppages

No claims will be admitted (other than those allowed for under "Breakdown" as herein provided), for stoppages through causes outside the Owner's control, including but not limited to bad weather or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any plant.

11. Loss Of Other Plant Due To Breakdown

Each item of plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, 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.

12. Limitation of Liability

Limitation of liability on the part of the Owner is expressly provided for in the Contract in the following clauses:

- (a) the Owner shall have no liability or responsibility for any loss or damage of whatever nature due to or arising through any cause beyond our reasonable control;
- (b) the Owner shall have no liability or responsibility in connection with the hire for any of the Hirer's loss of profit, loss of use of the plant 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; and
- (c) whenever the Contract (including these Clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Hirer's sole and exclusive remedy in respect of the 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 had not been made.

13. Hirer's Responsibility for Loss And Damage

- (a) For the avoidance of doubt it is hereby declared and agreed that nothing in this Clause affects the operation of Clauses 4, 5, 8 and 9 of this Agreement.

- (b) During the hire period the Hirer shall be subject to the provisions referred to in sub paragraph (a) and make good to the Owner all loss of or damage to the plant from whatever cause that may arise (fair wear and tear excepted) and except as provided in Clause 9 herein shall fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person(s) or property caused by or arising out of connection with storage, transit, transport, unloading, loading or use of the plant during the continuance of the hire period. The Hirer also fully and completely indemnifies the Owner in respect of all costs and charges in connection therewith whether arising under statute or common law. In the event of loss of/ or damage to the plant, hire charges shall be continued until settlement has been effected.
- (c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury due to or arising:
 - I. prior to delivery of any plant to the site, where the plant is in transit by transport of the Owner or as otherwise arranged by the Owner,
 - II. during the erection and/or dismantling of any plant where such plant requires to be completely erected/dismantled on site, provided that such erection and/or dismantling is under the exclusive control of the Owner or his Agent,
 - III. after the plant has been removed from the site and is in transit to the Owner by transport of the Owner or as otherwise arranged by the Owner,
 - IV. where plant is travelling to or from a site under its own power with a driver supplied by the Owner.

14. Notice of Accidents

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 to the Owner's office. In relation to any 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.

15. Re-Hiring etc.

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.

16. 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.

17. Return of Plant for Repairs

If during the hire period the Owner decides that urgent repairs to the plant are necessary they may arrange for such repairs to be carried out on site or at any location of their 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 9 and/or 13) will pay all transport charges involved. In the event of the Owner being unable to replace the plant they shall be entitled to determine the Contract forthwith (but without prejudice to any of the provisions of Clauses 9 and/or 13) by giving written notice to the Hirer. If such determination occurs:

(a) within three months from the commencement of hire, the Owner (but without prejudice to any of the provisions of Clauses 9 and/or 13) shall pay all transport charges involved, or,

(b) more than three months from the commencement of hire, the Owner (but without prejudice to any of the provisions of Clauses 9 and/or 13) shall only be liable only for the cost of reloading and return transport.

18. Basis of Charging

(a) Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of a technician supplied by the Owner except where breakdown is due to acts or omissions of third parties and/or the Hirer's misuse, misdirection or negligence, subject however to the provisions of Clause 8 of this Agreement.

(b) Plant shall be hired out either:

- I. On a per day, per month or per year basis,
- II. Without any qualification odd days at the beginning and at the end of the hire period shall be charged pro rata.
- III. 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.

19. "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 22.

20. Commencement and Termination of Hire (Transport of Plant)

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, an allowance shall be made of no more than one day's hire charge each way for travelling time.

21. Notice of Termination of Contract

Where the period of hire is indeterminate or having been defined becomes indeterminate 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. 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 25 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 technician shall not be deemed to constitute compliance with the provisions of this Clause.

22. Wages and other Chargeable Items relating to Drivers and Technicians of Plant

All chargeable items shall be paid by the Hirer at the rates contracted this includes 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 Time and Fares

Travelling time, fares and similar expenses for technicians and any person supplied by the Owner incurred at the beginning and end of the hire period and where appropriate return fare of the technician and any person supplied by the Owner to their office will be chargeable at cost. 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.

24. 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 their property.

25. 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.

26. Government Regulations

The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including but not limited to regulations under the Health and Safety at Work Act etc.

27. Protection of Owner's 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.
- (b) If the Hirer makes default in payment of any sum due to the Owner for hire of plant or other charges or shall fail to observe and perform the terms and conditions of this Contract, or if the Hirer shall suffer any distress or execution to be levied against themselves or make or propose to make any arrangement with their creditors or becomes insolvent or any amendment or reenactment thereof for the time being in force; or shall do or cause 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, this Contract may forthwith be determined by notice from the Owner to the Hirer (notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature). The Contract shall thereupon be deemed determined by reason of the Hirer's breach and it shall be lawful for the Owner to retake possession of the said plant and for that purpose enter into or upon any premises where the plant 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 any of the Owner's rights and remedies.

28. Dispute Resolution

- a) This contract shall in all respects be governed and construed in accordance with English Law. The parties submit to nonexclusive jurisdiction of the English courts. Nothing in this condition shall limit our right to take proceedings against the customer in any other Court of competent jurisdiction.
- b) In the event that individual terms of these Terms and Conditions should be or become invalid, unenforceable or illegal in whole or in part, this shall not affect the validity of the remaining terms and the validity of these Terms and Conditions. The parties shall be deemed to have agreed to replace the invalid, unenforceable or illegal terms by such valid, enforceable and legal terms as come as close as possible to the commercial objectives envisaged by the invalid, unenforceable or illegal terms.