

Vp plc - HIRE CONDITIONS

The Construction Plant-Hire Association model conditions for the hiring of plant (These conditions are not to be used for consumer contracts)

1. DEFINITIONS

- (a) The “Contract” is the Contract between the Owner and the Hirer for the hire of Plant, which incorporates the Offer and is governed by these conditions.
- (b) 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.
- (c) 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.
- (d) “Holiday Period” covers any cessation of work over Easter, Christmas and the New Year; as well as any other Bank or Public holidays.
- (e) “Offer” is the Owner’s offer to hire the Plant to the Hirer which will include details of the Plant to be hired, the Hire Period, relevant hire rates and charges and any supplementary conditions to be incorporated into the Contract.
- (f) The “Owner” is the Company, firm or person letting the Plant on hire and includes their successors, assignees or personal representatives.
- (g) “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 anything supplied by the Owner for the safe operation and routine inspection and maintenance of the Plant.
- (h) 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.
- (i) A “Working Week” covers the period from 8.00 am on Monday to 3.30 pm on Friday, unless otherwise specified in the Contract.

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 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. ACCEPTANCE OF PLANT

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

4. 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 13) 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.

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 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 the site, the Plant shall be deemed to be 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 the Plant requires to be erected on site, the periods stated above shall be calculated from the date of completed erection of Plant. 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 the Owner's recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted).
- (b) 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. If such Plant is continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising therefrom.
- (c) 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.

6. 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.

7. 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 within clause 7(b) 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.

8. 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 13) 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.

9. BREAKDOWN, REPAIRS AND ADJUSTMENT

- (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

25, 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.

10. OTHER STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" (clause 9) or for "Idle Time" (clause 25), as herein provided), for stoppages through causes outside the Owner's control, including but not limited to bad weather and / or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Hirer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.

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, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

12. LIMITATION OF LIABILITY

Except for liability on the part of the Owner which is expressly provided for in the Contract (including these 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 his reasonable control;
- (b) the Owner shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the 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 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.
- (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.

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 these conditions.

- (b) For the duration of the Hire Period (which for the avoidance of doubt includes the time Plant is left on site during a Holiday Period) the Hirer shall, subject to the provisions referred to in sub paragraph (a) make good to the Owner all loss of or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in clause 9 herein, and shall also fully and completely indemnify the Owner and any personnel supplied by the Owner in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period, and 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 at idle time rates as defined in clause 25 until the settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or idle time charges can be reinstated from the date of that agreement. Should idle time charges be re-instated, the agreed settlement figure remains payable in full.
- (c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury:
- (i) 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,
 - (ii) during the erection and / or dismantling of any Plant where such Plant requires to be completely erected / dismantled on site, provided always that such erection / 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 on a highway maintainable at the 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,
 - (iv) where the Plant is travelling to or from a site on a highway maintainable at the public expense (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after its joining such highway) 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 notification must be given by the Hirer to the Owner by telephone and confirmed in writing to the Owner no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Hirer is not bound to fully indemnify the Owner, no admission of liability, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's prior written permission.

15. RE-HIRING ETC.

Neither the Plant nor any part thereof shall be re-hired, sub-let, or lent to any third party without the prior 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 prior 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 then he may arrange for such repairs to be carried out on site or at any location of his nomination. In the event that urgent repairs to the Plant are necessary 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) paying all transport charges involved. In the event of the Owner being unable to replace the Plant he shall be entitled to terminate 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 termination occurs:

- (a) within three months from the commencement of the Hire Period, 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 the Hire Period, the Owner (but without prejudice to any of the provisions of clauses 9 and / or 13) shall be liable only for the cost of reloading and return transport.

18. BASIS OF CHARGING

- (a) The Hirer shall render to the Owner for each Working Week an accurate statement of the number of hours the Plant has worked each day. When any personnel, operator or driver is supplied by the Owner, the Hirer shall sign their time record sheets. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time records sheets.
- (b) Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of driver or operator 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 these conditions.
- (c) Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.
- (d) Plant shall be hired out either:
 - (i) for a stated minimum number of hours per Working Day or per Working Week or,
 - (ii) without any qualification as to minimum hours. Odd days at the beginning and at the end of the Hire Period shall be charged pro rata.
- (e) Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one stoppage and any excess will be charged for at the appropriate idle time rates.
- (f) In the case of Plant which is required to be dismantled for the purpose of transportation, if the Owner agrees to a modification of the hire charge for the period required for assembling on site and dismantling upon completion of the Hire Period, such modification of the hire charge and the Hire Period for which it shall apply shall be stated in the Offer / Contract.

19. PLANT HIRED 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.

20. PLANT HIRED 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.

21. PLANT HIRED 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.

22. "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 26.

23. COMMENCEMENT AND TERMINATION OF CONTRACT (TRANSPORT OF PLANT)

- (a) 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 is used on the day of travelling, full hire rates shall be paid for the period of use on that day. If more than one day is properly and unavoidably occupied in transporting the Plant, a hire charge at idle time rates shall be payable for such extra time, provided that where Plant is hired for a total period of less than one Working Week, the full hire rate shall be paid from the date of despatch to the date of return to the Owner's named depot or other agreed location.
- (b) If the Plant is not made available for collection as agreed between the parties, such Plant shall be deemed with immediate effect to be placed back on hire. The Hirer shall be responsible for the safekeeping of the Plant in accordance with clause 13, and for all the reasonable costs and expenses incurred by the Owner in seeking to collect such Plant.
- (c) 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 bowsers. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner should the Hirer fail to comply with this clause.

24. HIRER'S LIABILITY DURING THE NOTICE OF TERMINATION OF CONTRACT

- 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 31 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 24(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 24(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 24 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.

25. IDLE TIME

When the Plant is prevented from working for a complete Working Week, the hire charges shall be two thirds of the hire rate or such other idle time rate as is agreed in writing by the Owner for the period during which the Plant is not in use. If the Plant works for any time during the Working Day then the whole of that Working Day shall be charged as working time. In any case no period less than one Working Day shall be reckoned as idle time save for as provided for in clause 18(e). Where an "All-In" rate is charged, idle time is calculated on the machine element only. Full rate will be charged for the operator.

26. WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT

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.

27. TRAVELLING TIME AND FARES

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 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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 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.

34. CHANGES IN NORMAL WORKING WEEK

The foregoing provisions have been framed upon the basis of the Hirer working a 5-day week of 39 hours; it is hereby agreed that in the event of:

- (a) there being any agreed change in the normal weekly hours in the industry in which the Hirer is engaged or,
- (b) the Contract being made with reference to a 5 day week of other than 39 hours. Clauses 1(h) and (i), 18(c) and (d), 20 and (in regard to breakdown allowance and reduction for statutory holidays) 21 shall be deemed to be modified conformably and in the event of an alteration in the normal weekly working hours in the said industry the "Hire Rates and Terms" of Plant hired for a minimum weekly or daily period shall be varied pro rata.

35. 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.

36. 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.

37. 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.

VP PLC TERMS OF PAYMENT AND SPECIAL CONDITIONS

The sections above represent the Construction Plant-hire Association ("CPA") Model Conditions. The special conditions below ("Special Conditions") and the CPA Model conditions above ("Model Conditions") (together with all other documents referred to therein) constitute the entire agreement between the parties with respect to all matters referred to herein and all other understandings, agreements, warranties, conditions, terms or representations whether expressed or implied (whether by statute, common law or otherwise) are excluded to the fullest extent permitted by law. The Hirer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of the Owner prior to entering into the Contract, whether such statement was made orally or in writing, but nothing in the Model Conditions or the Special Conditions shall exclude or limit the liability of the Owner for fraudulent misrepresentation.

Nothing in these Special Conditions or the CPA Model Conditions shall exclude or limit the Owners liability to an individual for death or personal injury caused by the Owner's negligence.

In the event of any conflict or inconsistency between these Special Conditions and the Model Conditions, the Special Conditions shall prevail. The Model Conditions and Special Conditions take precedence over the Hirer's conditions of purchase unless otherwise agreed to in writing by the Owner.

For the avoidance of any doubt, the Contract (as defined below) is a contract of hire, and not a contract of sale. As such, title in the Plant shall not pass to the Hirer.

38. DEFINITIONS

"Contract" means the contract between the Owner and the Hirer for the hire of Plant, which incorporates the Offer and is governed by the Model Conditions and the Special Conditions.

"Force Majeure" means any event affecting the performance of any provision of the Contract arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of the Owner, including but without limitation, any abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supplies, war, military operations, riot, crowd disorder, strike, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or authority.

39. BREACH OF CONTRACT

- (a) The Owner may terminate the Contract forthwith by written notice to the Hirer, without prejudice to any other claim or right the Owner may make or exercise, 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 the Contract; (ii) The Hirer breaches any other term of the Contract; (iii) The Hirer suffers, or the Owner reasonably believes that the Hirer may suffer, any distress or execution to be levied against him/it; (iv) The Hirer becomes or is deemed to be insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment of it; or (v) The Hirer convenes a meeting of its creditors or makes or proposes any arrangement or composition with, or any assignment for the benefit of its creditors; or (vi) An order is made by a court of competent jurisdiction or a resolution is passed for the dissolution, winding-up or administration of the Hirer (otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations of the Hirer under the Contract); or (vii) If a trustee, receiver, administrator or other similar officer is appointed in respect of all or any part of the Hirer's business or assets; or (iix) The Hirer is or becomes unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986; (ix) An event analogous to any of the foregoing sub-clauses (iii) to (iix) inclusive occurs in any jurisdiction; or (x) The Hirer (being an individual) commits any act of bankruptcy or dies; or (xi) The Hirer gives notice of a creditors' meeting under section 98 of the Insolvency Act 1986 or any superseding legislation, or (xii) The Hirer does or 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.

- (b) Without prejudice to the Owner's other rights and remedies on termination of a Contract under Clause 39(a) above, the Owner's consent to the Hirer's possession of the Plant shall terminate immediately, the Hirer shall return the Plant forthwith to the Owner, failing which the Hirer shall ensure that the Owner may at any time enter onto any premises where the Plant is situated for the purpose of removing the Plant (the cost of doing which will be borne by the Hirer) and the Hirer shall forthwith pay to the Owner all charges owing in respect of the Plant (whether invoiced or not).

40. LIMITATION OF LIABILITY

Without prejudice to the other Special Conditions and Model Conditions, in the event that the Owner is held to be liable for any loss, expenditure or damage however arising in connection with the hire of Plant, such liability shall be limited to the total hire charges (if any) (excluding VAT) received by the Owner from the Hirer in respect of the unit of Plant which has caused such loss, expenditure or damage or to which such loss, expenditure or damage is related.

41. WARRANTIES

- (a) Save as expressly provided in these Special Conditions and Model Conditions the Owner does not make any representation concerning the condition, performance, qualities or fitness for a particular or any purpose of the Plant.
- (b) All drawings, illustrations, designs, plans, performance figures, computations, descriptions, weights and measurements supplied by the Owner to the Hirer are approximations only and shall not form part of the contract of hire between the Owner and the Hirer.
- (c) The Hirer warrants that all information and data supplied to the Owner by the Hirer, its agents or representatives, is accurate and fully comprehensive for the purpose of fulfilling the contract of hire between the Owner and Hirer.
- (d) The Hirer is relying on his own skill and judgement in relation to the Plant irrespective of any knowledge which the Owner or its servants or agents may possess or any representation the Owner or its servants

or agents may have made, including as to the purpose for which the Plant is supplied, or as to its suitability or specification or performance of capability.

42. SPECIFICATIONS

- (a) Any advice and suggested configurations given in support of the Plant is unless expressly agreed to the contrary given gratuitously and based solely on the information provided by the Hirer.
- (b) No attempt is or can be made to check the validity of any information provided by the Hirer or ascertain what further information should be taken into account and accordingly any configurations are suggested only. The Hirer must verify and be satisfied with the completeness of the information provided to the Owner and to ascertain the accuracy and validity of the interpretation of information presented by the Owner to the Hirer and whether the suggested configuration can be utilised on the relevant project either safely or at all.

Accordingly the Hirer must rely on his own skill and judgement and no liability shall be attached to the Owner in respect to any loss injury or damage of any kind whatsoever should the configuration be proven unsuitable unstable or unworkable except for death or personal injury resulting from the Owner's negligence.

- (c) Any changes to site conditions or other information provided by the Hirer must be notified in writing to the Owner immediately. The Owner reserves the right to nullify and withdraw the advice or configurations without notice for any changes to information either notified or otherwise. If the Hirer fails to notify the Owner of such changes the Owner takes no further responsibility whatsoever for the continued use of the Plant.

43. RECEIPT OF PLANT

The acceptance or use of the Plant by or on behalf of the Hirer shall be conclusive evidence that the Plant was delivered in a satisfactory condition accompanied by all the necessary operating instructions and other literature necessary for the safe and correct use of the Plant.

44. INDEMNITY

The Hirer undertakes to indemnify the Owner in all claims in respect of any damage expense or loss sustained by a third party however caused except for death or personal injury resulting from the Owner's negligence.

45. FORCE MAJEURE

- (a) If by reason of Force Majeure, the Owner is or anticipates that it will be prevented or hindered from fulfilling the substance of its obligations under the Contract, then the Owner shall notify the Hirer as soon as reasonably possible and the Hirer shall be entitled if such Force Majeure subsists for a period of three (3) months, to cancel or suspend the Contract by giving notice in writing to the Owner.
- (b) In the event of cancellation or suspension pursuant to clause 45(a), the Owner shall be under no liability to the Hirer or its sub-contractors for any loss which they may sustain in consequence of any such cancellation or suspension. The Hirer shall in the event of such cancellation be under no liability to the Owner in respect of its future obligations under the Contract and in the event of suspension of the Contract

shall be relieved of such obligations for the period of such suspension including the payment of any part of the hire charge due after such date of suspension (but without prejudice to any rights of either party against the other in respect of any claim accrued to the date of the commencement of such cancellation or suspension).

46. CUSTODY OF PLANT

The Plant is deemed to be in the custody of the Hirer from the earlier of delivery to the Hirer's site or collection from the Owner's depot by the Hirer until the earlier of (i) the end of the period of 72 hours (excluding Saturdays, Sundays and Bank Holidays) subsequent to the time which the Hirer notifies to the Owner to be the time he wishes to terminate the hire of the plant or (ii) such time as the Plant is either collected by or delivered into the custody of the Owner ("the Custody Period"). In Clause 13(b) of the Model Conditions the words "Custody Period" shall replace "Hire Period". In the event of any agreed suspension of hire the Plant will be deemed to remain in the custody of the Hirer and the suspension period shall form part of the Contract Period.

47. INSURANCE

The Hirer shall throughout the Contract Period (without prejudice to any liability of the Hirer to the Owner) at its own expense effect and maintain insurance in relation to the Plant with a reputable insurance company and such insurance will be in an amount equal to full new replacement value of the Plant (including all taxes, duties and other payments incidental to any replacements) and on fully comprehensive terms (including third party liability) against loss or damage from any cause whatsoever, including but without limitation, all risk of third party liability arising out of the transport, presence or use of the Plant.

48. HOURS OPERATED

All rates are conditional on the plant being used for no longer than 39 hours per week. Any hours worked in excess of 39 hours will be charged pro-rata. Site attendance for any reason outside normal working hours will be charged extra.

49. SPECIFIC REGULATIONS

In relation to clause 32 above the Hirer in particular accepts the following:

Diesel fuel supplied with plant must not be used as road fuel.

50. OPERATING AND CHARGING

PNEUMATIC TYRES & TUBES

All damage to TYRES and TUBES is the responsibility of the Hirer and all site repairs must be carried out by the Hirer at no cost to the Owner. Any tyres replaced by the Hirer must be of the same brand and specification as the tyre replaced or otherwise as specified by the Owner. Where the Hirer carries out any puncture repairs (or uses a third party contractor to do so) the repairs must comply with such industry-based standards as are approved by (and available on request from) the Owner.

LIFTING SLINGS

These will be charged extra as consumables at commencement of hire.

OPERATING CONDITIONS

At temperatures below 5 degrees C manufacturers specifications regarding antifreeze must be adhered to.

CLEANING

The hirer is responsible for any cleaning charges required at the termination of the hire.

51. HIRERS LIABILITY

Operation of the Plant by the Hirer must be in accordance with the manufacturers specifications, recommendations and instructions (or any of the same, or combination) and any liability arising by virtue of the Hirer's failure to comply with such specifications, instructions and recommendations (or any of the same, or combination) shall be the sole responsibility of the Hirer and the Hirer shall fully indemnify and wholly hold the Owner harmless from any claim made by any person arising directly or indirectly from such failure.

52. TERMINATION OF HIRE

Oral notice of termination of hire shall only be effective if a Finish-of-Hire reference number is obtained from the Owner as confirmation. Please note this on any relevant correspondence.

53. HIRES TO UNINCORPORATED BODIES

If the Hirer is an individual, partnership or other unincorporated body the contract of the hire will terminate not later than three months from the date of its commencement.

54. PAYMENT TERMS

Payment in full is to be received at the Owner's Head Office on or before the last working day of the month following the month date of invoice. No other payment terms shall prevail unless agreed in writing by the Owner. If the Hirer fails to pay the Owner any sum due in full on the due date, the Owner may charge interest on the overdue amount at the applicable rate from time to time pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (the "Act"), calculated (on a daily basis) from the date the relevant invoice became due until payment (compounded on the first day of each calendar month) and also claim fixed sum compensation from the Hirer pursuant to the Act. Time of payment shall be of the essence.

55. PRICES AND RATES

The Owner reserves the right to levy a minimum hire charge. Prices and rates quoted on this contract are exclusive of Value Added Tax. Tax will be charged at the appropriate rate on all invoices. The Owner reserves the right to increase the hire charges, at any time but not more than once in any twelve month period, on notice to the Hirer. The Hirer may terminate the Contract at any time within 30 days of the date of the Owner's notice of any increase in the hire charges pursuant to this clause. If the Hirer fails to give the Owner notice to terminate the Contract within the 30 day period as aforesaid, the Hirer will be deemed to have accepted the increase in the hire charges, which will apply to the Contract after expiry of the aforesaid 30 day period.

56. SET OFF

- (a) The Owner shall be entitled to set off and retain any sums due to the Hirer against any contingent or actual liabilities of the Hirer to the Owner or any other company within the same group of companies as the Owner.

- (b) The Hirer may not exercise any right of set off, legal or equitable against the Owner whether in respect of any contingent or actual liabilities of the Owner to the Hirer or otherwise.

57. DATA PROTECTION

The Owner's privacy policy explains how and why it collects, stores, uses and shares the Hirer's personal data. The Owner's privacy policy is available on request. Under data protection law, the Owner can only use the Hirer's personal data if it has a proper reason for doing so. Generally, the Owner will use the Hirer's personal data (i) to comply with its legal and regulatory obligations; (ii) for the performance of the Contract or to take steps at the Hirer's request before entering into the Contract, or (iii) for the Owner's legitimate interests or those of a third party.

Marketing communications - The Owner may use the Hirer's personal data to send updates (by email, text, telephone or post) and/or information about the Owner's services. The Hirer has the right to opt out of receiving such marketing communications at any time, by:

- contacting the Owner, or
- using the 'unsubscribe' link in emails or 'STOP' number in texts

58. PROPER LAW

The applicable law to these conditions shall be exclusively the Laws of England and save as provided elsewhere herein, whether in the Special Conditions or Model Conditions, the parties submit themselves exclusively to the jurisdiction of the English Courts.

59. NO WAIVER

Failure by the Owner to enforce any provision of the Model Conditions or the Special Conditions shall not be deemed a waiver of future enforcement of that or any other provision.

60. WORKING CONDITIONS

The Hirer shall not, without the Owner's prior written consent, use the Plant in or in respect of (or otherwise expose the Plant to) (i) work in salt barns or for loading salt, (ii) work with salt water or any other or similar corrosive substances, (iii) work with animal waste or in respect of animal processing, (iv) work with asbestos or asbestos waste materials or other similar hazardous materials.

61. NO VARIATION

No variation or amendment to the Model Conditions or the Special Conditions shall be valid unless signed in writing by the Owner.