

## 1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply to these terms and conditions.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** is the date that the Plant leaves the Company's depot.

**Company:** CES Hire Limited, their successors and assigns.

**Delivery:** the transfer of physical possession of the Plant to the Hirer at the Site.

**Plant:** all classes of plant, machinery, equipment and accessories listed in the accompanying quotation, all substitutions, replacements or renewals of such and all related accessories, manuals and instructions provided for it.

**Hirer:** Company, Firm, Person, Corporation or Public Authority taking the Company's Plant on hire and includes their successors and personal representatives.

**Payment Schedule:** the quotation which sets out the sums payable under these terms and conditions.

**Site:** the Hirer's premises at which the Plant is delivered.

**Rental Payments:** the payments made by or on behalf of Hirer for hire of the Plant as set out in the quotation.

**Rental Period:** the period of hire as set out in clause 3.

**Total Loss:** due to the Hirer's default the Plant is, in the Company's reasonable opinion or the opinion of its insurer, damaged beyond repair, lost, stolen, seized or confiscated.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994.

1.2 Clause headings shall not affect the interpretation of these terms and conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 The quotation forms part of these terms and conditions and shall have effect as if set out in full in the body of these terms and conditions and any reference includes the quotation.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these terms and conditions.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these terms and conditions under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes fax and e-mail.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 References to clauses are to the clauses of these Conditions.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. PLANT HIRE

- 2.1 The Company shall hire the Plant to the Hirer for use at the Site subject to these terms and conditions.
- 2.2 The Company shall not, other than in the exercise of its rights under these terms and conditions or applicable law, interfere with the Hirer's quiet possession of the Plant.

## 3. RENTAL PERIOD

The Rental Period either:

- (a) starts on the Commencement Date and shall continue until such time as the Plant is received back at the Company's named depot, both days being chargeable; or
- (b) is specifically agreed and fixed between the Hirer and the Company prior to the Commencement Date.

### 4. RENTAL PAYMENTS

- 4.1 The Hirer shall pay the Rental Payments to the Company in accordance with the accompanying quotation. The Rental Payments shall be paid in pound sterling and shall be made by cash, cheque, card and bank transfer.
- 4.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.
- 4.3 All amounts due under these terms and conditions shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.4 If the Hirer fails to make any payment due to the Company under these terms and conditions by the due date for payment, then, without limiting the Company's remedies under clause 10, the Hirer shall pay interest on the overdue amount at the rate of 4% per annum above the Royal Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Hirer shall pay the interest together with the overdue amount.
- 4.5 Where the Plant is not returned by the Hirer at the end of any Rental Period agreed in accordance with clause 3(b) above, the Rental Period shall continue on a rolling basis and the Company will continue to charge the Hirer additional Rental Payments for any whole or part of each rolling Rental Period that the Plant remains with the Hirer.

### 5. DELIVERY & COLLECTION

- 5.1 Delivery of the Plant shall be made by the Company or collected by the Hirer from the Company's premises. The Company shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. Title and risk shall transfer in accordance with clause 6 of these terms and conditions.
- 5.2 Unless the Hirer notifies the Company in writing within 3 days of the Plant being collected by the Hirer or delivered to the Site that the Plant is not satisfactory, it shall be deemed to be collected or delivered in good order.
- 5.3 To facilitate Delivery the Hirer shall provide access to enable Delivery to be carried out safely and expeditiously.
- 5.4 The Company shall be responsible for off-loading plant at the Site and any driver and/or mate shall be deemed to be under the Company's control.

### 6. TITLE, RISK AND INSURANCE

- 6.1 The Plant shall at all times remain the property of the Company, and the Hirer shall have no right, title or interest in or to the Plant (save the right to possession and use of the Plant subject to these terms and conditions).
- 6.2 The risk of loss, theft, damage or destruction of the Plant shall pass to the Hirer on Delivery. The Plant shall remain at the sole risk of the Hirer during the Rental Period and any further term during which the Plant is in the possession, custody or control of the Hirer (**Risk Period**) until such time as the Plant is redelivered to the Company, notwithstanding the use of Company's transport for that purpose. During the Rental Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:
- (a) insurance of the Plant to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing;
  - (b) insurance for such amounts as a prudent owner or operator of the Plant would insure for, or such amount as the Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Plant; and
  - (c) insurance against such other or further risks relating to the Plant as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to the Hirer.
- 6.3 The Hirer shall give immediate written notice to the Company in the event of any loss, accident or damage to the Plant arising out of or in connection with the Hirer's possession or use of the Plant.
- 6.4 If the Hirer fails to effect or maintain any of the insurances required under these terms and conditions, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.
- 6.5 The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.

### 7. HIRER'S RESPONSIBILITIES

7.1 The Hirer shall during the term of the Rental Period:

- (a) ensure that the Plant is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Company;
- (b) where under the terms of the quotation an operator is/are supplied by the Company to supervise the installation of the Plant and/or to provide continuing services of any kind, the Hirer shall be responsible for all claims arising in connection with the operation of the Plant by the operators;
- (c) take such steps (including compliance with all safety and usage instructions provided by the Company) as may be necessary to ensure, so far as is reasonably practicable, that the Plant is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (d) only with specific authorisation by the Company, maintain at its own expense the Plant in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Plant;
- (e) make no alteration to the Plant and shall not remove any existing component(s) from the Plant without the prior written consent of the Company unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Plant shall vest in the Company immediately upon installation;
- (f) supply all fuels, oils and grease necessary for operating the Plant which shall be of such grade or type as specified by the Company;
- (g) keep the Company fully informed of all material matters relating to the Plant;
- (h) keep the Plant at all times at the Site and shall not move or attempt to move any part of the Plant to any other location without the Company's prior written consent;
- (i) permit the Company or its duly authorised representative to inspect the Plant at all reasonable times and for such purpose to enter upon the Site or any premises at which the Plant may be located, and shall grant reasonable access and facilities for such inspection;
- (j) maintain operating and maintenance records of the Plant and make copies of such



- records readily available to the Company, together with such additional information as the Company may reasonably require;
- (k) not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Plant or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
  - (l) not without the prior written consent of the Company, attach the Plant to any land or building so as to cause the Plant to become a permanent or immovable fixture on such land or building. If the Plant does become affixed to any land or building then the Plant must be capable of being removed without material injury to such land or building and the Hirer shall repair and make good any damage caused by the affixation or removal of the Plant from any land or building and indemnify the Company against all losses, costs or expenses incurred as a result of such affixation or removal;
  - (m) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Plant and, where the Plant has become affixed to any land or building, the Hirer must take all necessary steps to ensure that the Company may enter such land or building and recover the Plant both during the term of the Rental Period and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Company of any rights such person may have or acquire in the Plant and a right for the Company to enter onto such land or building to remove the Plant;
  - (n) not suffer or permit the Plant to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Plant is so confiscated, seized or taken, the Hirer shall notify the Company and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Plant and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
  - (o) not use the Plant for any unlawful purpose;
  - (p) ensure that at all times the Plant remains identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Plant;
  - (q) deliver up the Plant at the end of the Rental Period or on earlier termination of the agreement between the Company and the Hirer at such address as the Company requires, or if necessary allow the Company or its representatives access to the Site or any premises where the Plant is located for the purpose of removing the Plant; and
  - (r) not do or permit to be done anything which could invalidate the insurances referred to in clause 6.

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7.2 The Hirer acknowledges that the Company shall not be responsible for any loss of or damage to the Plant arising out of or in connection with any negligence, misuse, mishandling of the Plant or otherwise caused by the Hirer or its officers, employees, agents and contractors, and the Hirer undertakes to indemnify the Company on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with these terms and conditions.

### 8. WARRANTY

8.1 The Company warrants that the Plant shall substantially conform to its specification (as made available by the Company), be of satisfactory quality and fit for any purpose held out by the Company. The Company shall use all reasonable endeavours to remedy, free of charge, any material defect in the Plant, provided that:

- (a) the Hirer notifies the Company of any defect within three 3 Business Days of the defect occurring or of becoming aware of the defect;
- (b) the Company is permitted to make a full examination of the alleged defect;
- (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Company's authorised personnel;
- (d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Hirer or on its behalf; and
- (e) the defect is directly attributable to defective material, workmanship or design.

8.2 If the Company fails to remedy any material defect in the Plant in accordance with clause 8.1, the Company shall, at the Hirer's request, accept the return of part or all of the Plant and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement between the Company and the Hirer.

8.3 The Company will be responsible for the cost of repairs to the plant involved in breakdowns resulting from normal usage and any repairs becoming necessary will be dealt with as quickly as reasonably possible and the Hirer shall at all times allow the Company, his agents or servants, to have access to the Plant.

### 9. LIABILITY

- 9.1 Nothing in these terms and conditions shall exclude or in any way limit:
- (a) the Company's liability for death or personal injury caused by its own negligence;
  - (b) the Company's liability for fraud or fraudulent misrepresentation; or
  - (c) liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973 or any other liability which cannot be excluded by law.
- 9.2 These terms and conditions sets forth the full extent of the Company's obligations and liabilities in respect of the Plant and its hiring to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Company except as specifically stated in these terms and conditions. Any condition, warranty or other term concerning the Plant which might otherwise be implied into or incorporated within these terms and conditions, whether by statute, common law or otherwise, is expressly excluded.
- 9.3 Without prejudice to clause 9.1, the Company shall not be liable under these terms and conditions for any:
- (a) loss of profit;
  - (b) loss of revenue
  - (c) loss of business; or
  - (d) indirect or consequential loss or damage,
- in each case, however caused, even if foreseeable.

### 10. TERMINATION

- 10.1 Without affecting any other right or remedy available to it, the Company may terminate the agreement with the Hirer with immediate effect by giving written notice to the Hirer if:
- (a) the Hirer fails to pay any amount due under the quotation on the due date for payment;
  - (b) the Hirer commits a material breach of any other of these terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 2 days after being notified to do so;
  - (c) the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or being a company or limited liability partnership is deemed unable to pay its debts within the meaning of



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- section 123 of the Insolvency Act 1986 or being an individual is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or being a partnership has any partner to whom any of the foregoing apply;
- (d) the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer (being a company);
  - (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Hirer (being a company);
  - (g) the holder of a qualifying floating charge over the assets of the Hirer (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - (h) a person becomes entitled to appoint a receiver over the assets of the Hirer or a receiver is appointed over the assets of the Hirer;
  - (i) the Hirer (being an individual) is the subject of a bankruptcy petition or order;
  - (j) a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Hirer's assets and such attachment or process is not discharged within 14 days;
  - (k) any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1(c) to clause 10.1(j) (inclusive);
  - (l) the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - (m) the Hirer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

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10.2 For the purposes of clause 10.1(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Company would otherwise derive from:

- (a) a substantial portion of these terms; or
- (b) any of the obligations set out in clause 7,

over any of these terms. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

10.3 The agreement between the Company and the Hirer shall automatically terminate if a Total Loss occurs in relation to the Plant.

## 11. CONSEQUENCES OF TERMINATION

11.1 Upon termination of the agreement between the Company and the Hirer, however caused:

- (a) the Company's consent to the Hirer's possession of the Plant shall terminate and the Company may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Plant and for this purpose may enter the Site or any premises at which the Plant is located; and
- (b) without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the Company on demand:
  - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.4; and
  - (ii) any costs and expenses incurred by the Company in recovering the Plant and/or in collecting any sums due under these terms and conditions (including any storage, insurance, repair, transport, legal and remarketing costs).

11.2 Upon termination of the agreement between the Company and the Hirer pursuant to clause 10.1, any other repudiation of these terms and conditions by the Hirer which is accepted by the Company or pursuant to clause 10.3, without prejudice to any other rights or remedies of the Company, the Hirer shall pay to the Company on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period, less a discount for accelerated payment at the percentage rate set out in the Payment Schedule.

11.3 The sums payable pursuant to clause 11.2 shall be agreed compensation for the Company's loss and shall be payable in addition to the sums payable pursuant to clause 11.1(b).

11.4 Termination shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach which existed at or before the date of termination.

### 12. FORCE MAJEURE

Neither party shall be in breach of these terms and conditions nor liable for delay in performing, or failure to perform, any of its obligations under these terms and conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate the agreement between the Company and the Hirer by giving 14 days' written notice to the affected party.

### 13. ENTIRE AGREEMENT

- 13.1 These terms and conditions and accompanying quotation constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.2 The Hirer acknowledges that in accepting these terms and conditions it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions.
- 13.3 Each party shall have no claim for innocent or negligent misrepresentation based on any statement in this terms and conditions.
- 13.4 Nothing in this clause shall limit or exclude any liability for fraud.

### 14. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### 15. RIGHTS AND REMEDIES

Except as expressly provided in these terms and conditions, the rights and remedies provided under these terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law.



### 16. SEVERANCE

- 16.1 If any provision or part-provision of these terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these terms and conditions.
- 16.2 If any provision or part-provision of these terms and conditions is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### 17. GOVERNING LAW

These terms and conditions and any dispute or claim arising out of or in connection with them their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

### 18. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these terms and conditions or its subject matter or formation (including non- contractual disputes or claims).