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GENERAL CONDITIONS OF HIRE

(These Conditions are not to be used for consumer contracts)

1. Definitions

(a) In these Conditions:-

“Hire Charges” means the various charges detailed in Condition 12.

“Hirer” means the person, firm or company or other party taking the Plant on hire, including their successors.

“Off Hire Number” means a unique number provided by the Owner to the Hirer under Condition 13 a (iii) confirming that the Hirer is no longer responsible for meeting Hire Charges.

“Owner” means the person, firm or company letting out the Plant on hire and includes their successors and assignees.

“Period of Hire” means from the time of commencement until the time of expiry of the period of hire as defined by Condition 3.

“Plant” means and includes any type of machine or equipment which the Owner agrees to hire to the Hirer in accordance with these Conditions.

“SPOA” means the Scottish Plant Owners Association.

“Standing Time” means the time during which the Plant supplied with an operator is standing idle and available for work.

“Working Week” means from start of business on a Monday until close of business on the following Friday.

(b) In these Conditions words importing the singular shall include the plural and vice versa and any gender includes any other gender and the neuter.

2. General

- (a) These Conditions supplied by the Owner to the Hirer shall be incorporated and shall govern each contract (“the Contract”) for the hire of the Plant entered into between the Owner and the Hirer to the exclusion of any terms or conditions of the Hirer. No variation of any of these Conditions shall be effective unless in writing and signed by a duly authorised representative of the Owner. If the Hirer’s order attempts to exclude these Conditions, such exclusion shall be ineffective unless expressly agreed to in writing by an authorised representative of the Owner.
- (b) Nothing in these Conditions shall exclude or limit any statutory rights of the Hirer which may not be excluded or limited due to the Hirer acting as a consumer. Any provision which would be void under any consumer protection legislation shall, to that extent, have no force or effect.

3. **Period of Hire**

- (a) In these Conditions, unless the context otherwise requires, the time of commencement of the Period of Hire is:-
 - (i) in a case where the Plant is collected by the Hirer from the Owner’s depot or elsewhere, the time it is so collected; or
 - (ii) in a case where the Plant comes under the control or direction of the Hirer or his agent before arrival at the Hirer’s site, the time it becomes so subject to the control or direction of the Hirer or his agent; or
 - (iii) in all other cases, the time the Plant arrives at the Hirer’s site.
- (b) In these Conditions, unless the context otherwise requires, the time of expiry of the Period of Hire is:-
 - (i) in a case where the Plant is returned by the Hirer to the Owner’s depot or to such other destination as may be directed by the Owner, the time of its arrival thereat; or
 - (ii) in a case where the Plant comes under the control and direction of the Owner after leaving the Hirer’s site but before arriving at the Owner’s depot or such other destination as may be directed by the Owner, the time it becomes so subject to the Owner’s control or direction.

4. **Ownership and Risk**

- (a) The Plant shall remain the property of the Owner at all times.
- (b) Subject to the Conditions, risk in, and liability for loss or damage to, Plant supplied by the Owner to the Hirer shall pass to the Hirer at the time of commencement of the Period of Hire.

5. Notification of Defects, Safe Keeping of Plant

(a) Notification of Defects

The Hirer or his representative shall inspect the Plant on delivery. Delivery shall take place when the Plant is uplifted by the Hirer from the Owner's depot or delivered to the Hirer's site or other delivery location agreed between the Owner and the Hirer. The Plant shall be deemed to be in good order (save for latent defects and defects not reasonably ascertainable by inspection) and duly accepted by the Hirer in accordance with the Contract and no claim for loss and damage shall be considered by the Owner unless the Hirer gives written notice to the Owner of an alleged defect within 24 hours of delivery.

(b) Safe Keeping of Plant

The Hirer or his representative shall until the time of expiry of the Period of Hire keep himself acquainted with the state, condition and use of the Plant and shall ensure its safekeeping, shall use it in a workmanlike manner only and not for any purpose beyond its capacity nor in any way likely to result in undue deterioration. If the 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 or accidents whether directly or indirectly arising therefrom.

(c) The Hirer shall be responsible for returning it to the Owner or allowing the Owner access to uplift the Plant, whichever is agreed between the Owner and the Hirer, on expiry of the hire, in the same condition as that in which it was delivered (fair wear and tear excepted).

(d) Vandalism

Without prejudice to (b) hereof, the Hirer will be responsible to the Owner for destruction of or damage to the Plant caused maliciously or mischievously by any party whilst it is in his care or under his control, and the provisions of the immediately preceding sub-condition will not detract from the Hirer's absolute obligation in this respect. Destruction of or damage to Plant will be presumed to have been caused maliciously or mischievously and the onus of rebutting that presumption will be on the Hirer.

6. Breakdown

(a) Under exception of notification of any defects on delivery as provided in Condition 5(a), any breakdown or unsatisfactory working of the Plant or any part thereof must be notified to the Owner within 24 hours of its discovery by the Hirer or his representative. Any claim for breakdown time will only be considered from the time and date of notification. In default of such notification the Owner shall be deemed to have properly performed its obligations under the Contract. In the event of a breakdown in or unsatisfactory working of, the Plant, not readily repairable, notified by the Hirer to the Owner in accordance with these Conditions, the Owner shall be entitled to supply in substitution Plant of a similar type and condition. If the Owner is not in a position to do so, the Contract shall be terminated as from the date of the breakdown.

(b) The breakdown or stoppage of any one item of Plant shall not entitle the Hirer to claim any compensation or allowance for the loss of working time by any other item of Plant working in conjunction therewith.

- (c) Each unit of Plant specified in the Contract is hired as a separate item unless expressly hired together with another unit or units of Plant as a single composite item.

7. Allowances

- (a) Subject to notification having been made to the Owner in accordance with these Conditions, no charge will be made on the Hirer for any stoppages due to breakdown of Plant caused by the development of an inherent fault or fair wear and tear nor for stoppages for normal working repairs. No allowance will be made for stoppages resulting from any other cause for which the Owner is not responsible (which shall be deemed to include, without limitation, bad weather and ground conditions).
- (b) For the avoidance of doubt any allowance made against the Hire Charges shall be the Hirer's only 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.

8. Servicing and Inspection

The Hirer shall allow the Owner, his representatives or his insurers access to the Plant at all reasonable times for the purposes of inspecting, testing, adjusting, repairing or replacing the same.

9. Hirer's Responsibilities

- (a) During the Period of Hire, but subject to the provisions of Conditions 5 & 6 hereof, the Hirer shall reimburse the Owner for all loss of or damage to the Plant howsoever caused and whether or not caused by fault on the part of the Hirer or his servants or agents (fair wear and tear excepted) and the Hirer shall indemnify the Owner and keep the Owner fully indemnified in respect of all claims by third parties for any loss, injury or damage whatsoever which may have been sustained by them in consequence of or in connection with or arising out of the storage, transit, transport, unloading, loading, erecting, dismantling and/ or use of the Plant and all costs and charges in connection therewith, whether arising under statute or common law.
- (b) During the Period of Hire the Hirer shall insure the Plant at the Hirer's own expense against loss and damage from all risks (including third party risks). The Hirer shall indemnify the Owner against all loss or damage to the Plant not recoverable under the policy of insurance.
- (c) From the time of commencement of the Period of Hire the Hirer shall, in the event of loss of or damage to the Plant howsoever caused, be liable for the Hire Charges payable in terms hereof, and such liability shall continue until such time and date as the Hirer pays for the cost incurred by the Owner in respect of such loss and damage.
- (d) 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.

- (e) The changing of any tyre and repair of any punctures shall be the responsibility of the Hirer who shall arrange for the tyre(s) in question to be changed or repaired (as the case may be) without awaiting authorisation from the Owner. The Hirer shall be responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture. The Hirer shall ensure that any replacement tyre meets the manufacturer's recommended standards and that any such repairs shall be carried out to the best standards of good workmanship.
- (f) If the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel, or be transported over without suitable timbers or equivalents, the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the Plant to work on, travel, or be transported over (including for the purposes of delivery and collection).
- (g) The Hirer shall be responsible for the unobstructed access to, and (unless otherwise agreed in writing) for loading, unloading, erecting and/or dismantling of the Plant at the Hirer's site. Any personnel supplied by the Owner for such loading, unloading, erecting and/or dismantling 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 loading, unloading, erecting and/or dismantling of the Plant, be regarded as the servants or agents of the Hirer who alone shall be responsible for all claims arising out of, or in connection with, the loading, unloading, erecting and/or dismantling of the Plant by, or with the assistance of, such personnel.

10. **Indemnity to Owner**

Where an operator is provided with the Plant, he shall work under the supervision and instructions of the Hirer or his representative and the Hirer shall not permit any person other than the operator to operate the Plant without the Owner's prior consent in writing. The operator shall be deemed during the Period of Hire to have become an employee of the Hirer who shall be responsible for his actions as if he were in the Hirer's direct employ to the effect that the Hirer shall free and relieve the Owner of and from the consequences of all claims of whatever nature which may be made against the Owner (a) by third parties as a consequence of any acts or omissions of the operator, including claims arising from the operator's negligence or breach of statutory duty; and/or (b) by the operator in respect of any loss injury or damage suffered by him except where that loss injury or damage arises as a consequence of any negligence of the Owner.

11. **Protection of Owner's Rights**

- (a) The Hirer shall not sell, sub-let, hire, assign, grant security over, deal with or part with possession or control of the Plant or any part of it, or attempt to do so without the Owner's prior consent in writing.
- (b) The Hirer shall not remove, deface or cover up the Owner's name plate or mark on the Plant indicating that it is the Owner's property.
- (c) Except as provided for by Condition 9(e), the Hirer shall not repair or adjust the Plant or attempt to do so unless authorised by the Owner in writing.

12. **Charges**

(a) **Charges**

- (1) Where the Plant is hired at a rate per Working Week it shall be charged for on the basis of a minimum of 39 hours per Working Week unless otherwise stated (Hours worked in excess of that stated shall be charged pro-rata);
- (2) Where the Plant is hired on a basis of a rate per day it shall be charged for on the basis of a minimum of eight hours per day (except Friday which shall be seven hours) unless otherwise stated (Hours worked in excess of that stated shall be charged pro-rata); and
- (3) Where the Plant is hired with an operator on the basis of a composite rate per Working Week or per day of a minimum or specified number of hours, any time for which it is working in excess of those hours shall be paid for pro rata, the hourly rate being arrived at by dividing the weekly rate or daily rate by the number of hours so specified.

(b) **Overtime**

When Plant is hired with an operator on the basis of separate Plant and operator rates, overtime shall be charged for hours worked in excess of the minimum or specified hours at the agreed Plant and operator rates plus the operator's premium overtime rates as applicable.

(c) **Standing Time**

Where Standing Time is charged for it shall be at two thirds of the Plant rate plus the operator at his standard rate or at two thirds of any composite rate which has been charged for Plant and operator. In computing Standing Time, periods of shorter duration than those for which the rates are quoted shall be treated as working time. A standing period of less than a week shall be treated as working time in the case of items of Plant quoted in the schedule as falling to be hired for a week of a specified number of hours and, in any event, a standing period of less than one day shall be treated as working time.

(d) **Assembling, Rigging and Dismantling**

Time spent in assembling, rigging and dismantling Plant shall be charged for and the cost of assembling, rigging and dismantling shall also be paid for by the Hirer.

(e) **Other Costs**

- (i) Any costs incurred by the operator in travelling to and from the Owner's depot, or his home to the Hirer's site shall be charged to the Hirer.
- (ii) Any consumable item, such as fuel, oil or grease supplied by the Owner shall be charged to the Hirer. It shall be the Hirer's responsibility, if purchasing such consumable items, to purchase items of good quality and which meet the appropriate specification for the Plant.

- (iii) Where appropriate, the cost of resharpening drills/steels etc shall be borne by the Hirer.
- (iv) The Hirer shall pay the costs of transport of the Plant from the Owner's depot or equivalent to the Hirer's site or other delivery location and return therefrom to the Owner's depot or equivalent on expiry of the Period of Hire.
- (v) The Hirer shall be responsible for the cost or expense of recovering any Plant from soft ground.

13. **Determination of Responsibility for Hire Charges**

(a) The Hire Charges shall run from the time of commencement of the Period of Hire until the following date:-

- (i) Where the hire is for a fixed period on the expiry of that fixed period; or
- (ii) Where the hire is not for a fixed period, or where the hire is continued after the expiry of the fixed period without any new period being determined, two days after either party shall have given to the other written notice to terminate the hire; or
- (iii) In any event when the Hirer receives from the Owner a valid Off Hire Number in respect of the Plant, and at which stage the Hirer shall forthwith deliver the Plant to, or allow its uplift by, the Owner. Failure to do so will result in the Hirer being responsible for the Hire Charges to the Owner in respect of any period where there is delay in delivery or uplift which is not due to any act or omission of the Owner.

14. **Termination**

(a) If the Hirer:-

- (i) fails to pay any Hire Charges or other sums payable under the Contract when they become due (whether demanded or not); or
- (ii) commits a breach of any other terms and conditions of the Contract; or
- (iii) shall do or allow to be done any act or thing which in the opinion of the Owner may jeopardise the Owner's rights in the Plant or any part thereof, then the Owner shall, without prejudice to any other right or remedy available to the Owner, have the right to automatically terminate the Contract without notice and without the Owner having any liability to the Hirer.

(b) If any of the following events occur:-

- (i) if the Hirer makes any voluntary arrangement with his creditors or (being an individual) shall die or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise for the purpose of amalgamation or reconstruction) or an encumbrancer

takes possession, or a receiver is appointed over any of the property or assets of the Hirer; or

- (ii) if the Hirer ceases or threatens to cease to carry on business; or
 - (iii) the inability of the Hirer to pay his debts as they fall due; or
 - (iv) if any diligence, execution or other legal process shall be levied on or against the Plant or any part thereof or against any premises when the same may be or against any property or assets of the Hirer, then in each and every case the Contract shall automatically terminate without notice and without the Owner having any liability to the Hirer.
- (c) The Hirer shall upon termination of the Contract under Conditions 14(a) or 14(b) pay to the Owner:-
- (i) all arrears of Hire Charges then due under the Contract and all other sums accrued, due and unpaid by the Hirer to the Owner at the date of termination, together with interest payable under Condition 20 and any other sums due under any other agreement between the Owner and the Hirer; and
 - (ii) the cost of all repairs to the Plant required as at the date of termination (other than those for which the Owner has assumed responsibility under Condition 6).
- (d) Termination of the Contract pursuant to Conditions 14(a) or 14(b) shall not affect any rights of the Owner or liabilities of the Hirer subsisting as at the date of termination.
- (e) On termination of the Contract for any reason or on expiry of the Period of Hire, the Hirer shall no longer be in possession of the Plant with the Owner's consent and shall (unless otherwise agreed with the Owner) forthwith return the Plant to the Owner at such address as the Owner may direct in good order and in good working condition and at the Hirer's expense and risk. Without prejudice to any other rights or remedies of the Owner under the Contract, the Owner may at any time after such termination, without notice, retake possession of the Plant for which purpose it shall be lawful for the Owner or his representatives to enter into or upon any premises or site where the Plant may be held, and the Hirer shall indemnify and keep the Owner indemnified on a full indemnity basis against all loss, damage, costs, or expenses so arising including loss, damage, costs or expenses in respect of third party claims.

15. **Operated Plant**

The Hirer shall sign the operator's weekly time sheet, which shall be conclusive as to the working hours of the Plant, plus operator's driving and normal maintenance time. Operator's time spent on breakdown will be chargeable to the Hirer unless the repairs involved are necessary because of the fault of the Owner.

16. **Outriggers and Stabilisers**

Any sound timber or other material supplied by the Owner for use with outriggers or stabilisers to the Plant is provided solely to assist the Hirer and expressly not to

relieve him in any way from his legal, regulatory or contractual obligations to ensure adequate stability of Plant under imposed loading.

17. Exclusion of Warranties

All warranties, conditions or other terms implied by statute or common law with regard to the Plant, except as expressly provided in these Conditions, are expressly excluded to the fullest extent permitted by law.

18. Limitation of Liability

- (a) Except for liability for death or personal injury arising from the Owner's negligence or fraudulent misrepresentation, the Owner's obligation to repair or replace the Plant as provided in Condition 6 shall constitute the full extent of the Owner's liability in respect of any loss or damage sustained by the Hirer whether caused by any breach of the Contract or, in delict (including negligence or breach of statutory duty) or by misrepresentation or otherwise of the Owner, his employees or agents or arising from any other cause whatsoever; and
- (b) The Owner shall not be liable to the Hirer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise) costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

19. Consumer Credit Legislation

Where the Contract is one to which the Consumer Credit Act 1974 would otherwise apply it is an essential condition of the hire (unless the Owner and Hirer expressly agree in writing that the Contract shall subsist for a period of greater than 80 days) that it will terminate on the expiry of 80 days from its commencement and that there shall be no right or option on the part of the Hirer to require the Owner to extend the Contract or enter into a new contract of hire with the Owner. This clause is without prejudice to the provisions for termination contained in Condition 14.

20. Interest

All invoices are due for payment within 30 days of the date of invoice. Time of payment shall be of the essence of these Conditions. In the event of late payment then without prejudice to any other right or remedy the Owner shall be entitled to charge interest at the rate of 3% per annum above the base rate of the Royal Bank of Scotland plc from time to time (both before and after any judgement) from the due date until settlement is received in full.

21. Government Regulation

The Hirer shall be responsible for complying with all and any statutory provisions or regulations in relation to the operation and use of the Plant during the subsistence of the Period of Hire.

22. Data Protection

Where the Hirer is a sole trader:-

- (a) the Owner will take all reasonable precautions to keep the details of the Hirer's order and payment secure, but unless the Owner is negligent, the Owner shall not be liable for unauthorised access to information supplied by the Hirer; and
- (b) the Owner will only use the information the Hirer provides about himself for the purpose of fulfilling the Owner's obligations under the Contract, unless the Hirer agrees otherwise. The Hirer may correct any information about himself or ask for information about himself to be deleted, by giving the Owner written notice in accordance with Condition 23(d).

23. Miscellaneous

- (a) The Owner shall use all reasonable endeavours to discharge its obligations under these Conditions in a prompt and efficient manner but the Owner does not accept responsibility for any failure or delay caused by circumstances beyond its control.
- (b) No waiver by the Owner of any breach of these Conditions by the Hirer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (c) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- (d) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and shall be served by personal delivery or by pre-paid first class post addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any such notice shall be deemed to have been received if delivered personally, at the time of delivery and in case of prepaid first class post, 48 hours from date of posting.
- (e) The Owner may assign, transfer, charge or dispose of any of its rights, or sub-contract or otherwise delegate any of its obligations under the Contract.
- (f) The Hirer may not assign, transfer, sub-contract or otherwise dispose of the benefit or burden of the Contract to a third party without the prior written consent of the Owner.
- (g) The Hirer consents to registration of the Contract (and any certificate given in respect thereof) for preservation and execution. A certificate signed for and on behalf of the Owner shall be sufficient to fix and ascertain the sums due by the Hirer to the Owner under the Contract and shall be conclusive of the amounts due.

24. Dispute Resolution

- (a) The Scheme for Construction Contracts (Scotland) Regulations 1998 as amended, modified, replaced, consolidated and/or re-enacted from time to time (whether before or after the date of the Contract) ("the Regulations") shall apply to the Contract. The

Contract may specify the person (if any) to act as adjudicator. For the purposes of the Regulations, the specified nominating body to select any adjudicator shall be the SPOA acting through its President from time to time.

- (b) The Owner and Hirer shall comply forthwith with any decision of the adjudicator and where court action follows thereon, shall not defend such action and shall consent to decree and submit to enforcement in respect of any such decision, in each case without any defence, set-off, counterclaim, abatement or deduction.
- (c) Where the Owner, Hirer or 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.

25. **Governing Law**

These Conditions shall be governed and construed in accordance with the Law of Scotland and the Hirer hereby submits to the non-exclusive jurisdiction of the Scottish Courts.