

TERMS OF HIRE

Terms of Hire

SPECIAL CONDITIONS FOR USE IN CONJUNCTION WITH THE CPA MODEL CONDITIONS FOR THE HIRING OF PLANT (WITH EFFECT FROM JULY 2011)

The terms comprise the CPA Model Conditions for the Hiring of Plant (with Effect from July 2011) (the “Standard Conditions”) and the following Special Conditions.

SPECIAL CONDITIONS 38 The Standard Conditions shall be amended as follows and form part of
OF CONTRACT the conditions of contract:

CLAUSE 1: DEFINITIONS

Delete Clause 1 and substitute:

(a) The “Contract” means the Contract between the Owner and the Hirer for the hire of Plant , which incorporates the Hire Order and is governed by the Standard Conditions as amended by these Special Conditions

(b) The “Hire Order” means the document headed “Order” that contains the particulars of the Plant, Hire Period, hire charges and other relevant information, together with any amendments thereto signed by or on behalf of the Hirer, and issued to the Owner

(c) The “Hire Period” means the period, which shall apply to each item of Plant on an individual basis and shall commence from the time when the item of Plant is delivered to the site by the Owner or the date specified in the Hire Order, whichever is the later and shall continue until the Hirer makes the Plant available for collection at the site.

(d) The “Hirer” is Specialist Equipment Solutions Limited and includes its successors or authorised representatives.

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

(f) The “Owner” is the Company, firm or person letting the Plant on hire and includes their successors, assignees or personal representatives.

(g) The “Plant” covers all classes of Plant, or replacement Plant, machinery, equipment, accessories and any ancillary items or equipment therefor, which the Owner agrees to hire to the Hirer, or anything else 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) The “site” means the places specified by the Hirer where the Plant is to be delivered to and collected from.

(i) A "Working Week" means seven (7) calendar days.

CLAUSE 2: EXTENT OF CONTRACT

Delete Clause 2 and substitute:

- 2(a) Any reference in this Contract to a statutory provision shall be construed as a reference to that provision as from time to time amended or re-enacted.
- 2(b) No term of this Contract is intended by the parties to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract.
- 2(c) This Contract constitutes the entire understanding of parties concerning the supply of Plant and supersedes all prior negotiations and agreements (written or otherwise) between them.
- 2(d) No waiver by either party or any other default by the other in performance of any of the provisions of this Contract shall operate or be construed as a waiver of other or further default, whether of a like or different character.
- 2(e) The Owner represents that, in connection with this Contract, it has, and covenants that it has, read, understood and will comply with the Supply Chain Code (and any subsequent revisions thereto which will be available at www.amecfw.com/supply-chain-cobc.htm) which extends to the Hirer as a member of the Amec Foster Wheeler Group of Companies.

The Owner undertakes to promptly (and in any event within 14 days) notify the Hirer of any alleged potential, suspected or actual breach(es) of the law, the Code or Supply Chain Code via the Supply Chain Management page on the Hirer's Group website (www.amecfw.com/supply-chain-cobc.htm)

CLAUSE 4: UNLOADING AND LOADING

Delete from and including "who shall be solely responsible" to the end of the clause and replace with:

"who shall be responsible for any claims arising in connection with unloading and/or loading of the Plant by, or with the assistance of such personnel except in respect of any claims which are due to the negligent acts or omissions of such personnel."

CLAUSE 5: DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

Add the following sentence to the beginning of the clause:

"The Owner shall supply the Plant to the Hirer in good order, in conformity with the Plant manufacturer's specifications, and in compliance with the provisions of the Contract."

CLAUSE 6: SERVICING AND INSPECTION

Delete the last sentence and replace as follows:

"So far as reasonably practicable the Hirer shall allow such access and at such times to suit the convenience of the Hirer. Where necessary, replacement Plant items shall be provided to the Hirer at no additional cost. The Owner shall provide written reports and digital photographic evidence of any new damage."

CLAUSE 9: BREAKDOWN, REPAIRS AND ADJUSTMENT

Clause 9(a), amend as follows:

Line 2 delete "and confirmed in writing"

Line 4 delete "written"

Line 4 delete "and acknowledged"

Clause 9(b), line 1 delete "Offer" and replace with "Hire Order"

Clause 9(d), amend as follows:

Line 1 delete "all expense" and replace with "all reasonable expense"

Line 4-5 delete "at the idle time rate as defined in clause 25"

CLAUSE 10: OTHER STOPPAGES

Line 2 delete "or for Idle Time" (clause 25)"

CLAUSE 11: LOSS OF OTHER PLANT DUE TO BREAKDOWN

Line 6 delete "expressly hired together as a unit" and replace with:

"hired together and required to be used in conjunction with the other"

CLAUSE 12: LIMITATION OF LIABILITY

Clause 12(a), amend as follows:

Line 1 delete "the Owner shall have no" and replace with: "neither the Owner nor the Hirer shall have any".

Line 2, delete "his" and substitute "their".

Clause 12(b), amend as follows:

Line 1 delete "the Owner shall have no" and replace with "neither the Owner nor the Hirer shall have any".

Line 4, delete "Hirer's" and substitute "other party's".

Delete Clause 12 (c) and substitute "Not used".

Clause 12(d), amend as follows:

Line 2 delete "Owner's" and replace with "Hirer or the Owner's".

Line 3 delete "the Owner's" and replace with "that party's"

CLAUSE 13: HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

Clause 13(b) amend as follows:

Lines 5 –7 Delete from “and shall also fully” up to “any person whatsoever” and replace with:

“and shall be liable”

Line 11 delete from “In the event of loss or damage” to the end of the clause

CLAUSE 15: RE-HIRING ETC

Delete Clause 15 and substitute:

“Not used”

CLAUSE 16: CHANGE OF SITE

Delete Clause 16 and substitute:

“Not used”

CLAUSE 17: RETURN OF PLANT FOR REPAIRS

Clause 17(a), after “all transport charges involved” insert the words:

“and where applicable any reasonable and unavoidable expenses incurred by the Hirer in replacing such Plant”.

CLAUSE 18: BASIS OF CHARGING

Delete Clause 18 and substitute:

18(a) The Plant shall be paid for at the rates set out in the Hire Order for the agreed Hire Periods unless otherwise amended in accordance with this Contract.

18(b) If the Plant does not arrive at the Site at the start time stipulated and such delay is due to the act or default of the Owner, the Hirer may decide not to proceed with the Hire Period and the Owner shall make no charge to the Hirer for the Plant that he has agreed to provide. If the Plant is delayed in arriving at the Site in respect of the start time stipulated due to the act or default of the Owner and the Hirer wishes the Hire Period to proceed, hire charges will commence from the date and time of arrival.

18(c) In the event that the Owner is entitled under the Contract to recover charges on a time expended basis, then the Owner shall be required to obtain from the Hirer a duly signed timesheet.

18(d) No hire charges will be made for breakdown periods of the Plant

18(e) Notwithstanding 18(d) above, any stoppages due to changing of tyres and repairs to punctures will be chargeable as part of the Hire Period up to a maximum of two (2) hours.

CLAUSE 21: PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 39 HOURS PER WEEK

Delete Clause 21 and substitute:

"Not Used"

CLAUSE 23: COMMENCEMENT AND TERMINATION OF HIRE
(TRANSPORTATION OF PLANT)

Delete Clause 23 and substitute:

"The Hire Period shall commence from the date and time of the Plant's delivery to Site by the Owner, or the date specified in the Hire Order, whichever is the later, and shall continue until the Plant is made available for collection by the Hirer, or the Hire Period is terminated under Clause 24 or otherwise terminated under the Contract, whichever is the earlier."

CLAUSE 24: HIRER'S LIABILITY DURING THE NOTICE OF TERMINATION OF CONTRACT

Delete Clause 24 and substitute:

"The Hirer may terminate the Hire Period for any individual item of Plant for any reason by giving one (1) calendar day's notice in writing. The Hirer shall only be liable to pay for the balance of the Hire Period for the individual item of Plant to a maximum of the one (1) day notice period."

CLAUSE 25: IDLE TIME

Delete Clause 25 and substitute:

"Not used".

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

Delete Clause 26 and substitute:

"Not used".

CLAUSE 27: TRAVELLING TIME AND FARES

Delete Clause 27 and substitute:

"No charge, unless as a result of loss or damage that is due to the Hirer's negligence, shall be made by the Owner for any expenses incurred by employees of the Owner for the purpose of driving, operating, servicing, repair or maintenance of Plant, which for the avoidance of doubt shall include any travelling time, fares and similar expenses."

CLAUSE 28: FUEL, OIL AND GREASE

At the end of the clause after "oil or grease" add:

"unless supplied by Owner"

CLAUSE 29: SHARPENING OF DRILLS/STEELS ETC

Delete Clause 29 and substitute:

"Not used".

CLAUSE 31: TRANSPORT

Delete on Line 1 "and if required by the Owner, arrange"

CLAUSE 33: PROTECTION OF OWNER'S RIGHTS

Delete Clause 33 and substitute:

"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."

CLAUSE 34: CHANGES IN NORMAL WORKING WEEK

Delete Clause 34 and substitute:

"Not used".

Clause 35: DISPUTE RESOLUTION

Clause 35 (b) line 6 delete "Offer" and replace with "Hire Order"

CLAUSE 36: LATE PAYMENTS

Delete Clause 36 and substitute:

"The Owner reserves the right to charge the Hirer for late payment of any outstanding invoices at the rate of 3% (three percent) per annum above the prevailing Bank of England Base Rate."