



## MODEL CONDITIONS FOR THE HIRING OF PLANT (WITH EFFECT FROM June 2005)

### 1. Definitions

- (a) The **"Owner"** is GE Capital Equipment Services Limited (company registration number 571174) of GE Equipment Services Plant Hire Limited. Webber House, 26-28 Market Street Altrincham Cheshire WA14 1PF.
- (b) The **"Hirer"** is the Company, firm, person, Corporation or public authority named on the account application and despatch note taking the Owner's Plant on hire and includes their successors or personal representatives.
- (c) **"Plant"** covers all classes of Plant, machinery, equipment and accessories therefore, which the Owner agrees to hire to the Hirer.
- (d) A **"day"** shall be 8 hours or if the day is a Friday it shall be 7 hours, unless otherwise specified in the Contract.
- (e) A **"working week"** covers the period from starting time on Monday to finishing time on Friday.
- (f) The **"hire period"** shall be the time period for which the Plant is deemed on-hire to the Hirer.

### 2. Extent of Contract

- (a) Unless agreed otherwise by the parties in writing no conditions or warranty shall be deemed to be incorporated in or to form part of the contract between the Owner and the Hirer ('the Contract') or shall otherwise govern the relationship between the Owner and the Hirer in relation to the hire of any particular Plant. The Contract does not create any right enforceable by or purport to confer any benefit on any person not a party to it 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 maybe).
- (b) The Contract will come into existence on the signature by a duly authorised representative of the Hirer of a Despatch Note for the Plant or at such earlier time by the signature by both parties of a request to deliver such Plant as may be specified in the request. Anyone signing on behalf of the Hirer shall be deemed to be an authorised representative and signatory of the Hirer having full authority to bind the Hirer. If no Despatch Note nor earlier request has been signed then the Contract will be deemed to come into existence upon the delivery of the Plant and the Hirer agrees that these Conditions shall nevertheless apply to the hire of the Plant.
- (c) The minimum hire period may be stated in the Despatch Note. If no minimum hire period is so stated the minimum hire period shall be 3 days. When this minimum hire period has expired the Contract shall continue until terminated by either party pursuant to these Conditions.
- (d) In accordance with the Consumer Credit Act, if the Hirer is a Partnership, Sole Trader or other unincorporated body, then the maximum period of hire will not be capable of lasting for more than three consecutive calendar months and the Hirer shall return the Plant to the Owner on or before the last day of the third consecutive calendar month of the hire period.

### 3. Acceptance of Plant

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

### 4. Unloading and Loading

The Hirer shall be responsible for the unobstructed access and, unless otherwise agreed in writing, for unloading and loading 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 Condition 13) who alone shall be responsible for and indemnify the Owner against all claims, losses, costs, damages, liabilities and proceedings howsoever arising in connection with any actions, default or omissions of such personnel or the 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 agreed otherwise by the parties the Plant shall be delivered by 5pm on the date specified for delivery and the Owner shall use all reasonable endeavours to complete the delivery at the time and on the date agreed but the Owner shall not be bound to do so.
- (b) In the event of any delay in delivery of Plant the Hirer may cancel its order for Plant and the Owner shall not be liable for any charges for late delivery nor any consequential damages, time of delivery not being the essence of the Contract.
- (c) On delivery of the Plant a duly authorised representative of the Hirer shall inspect and acknowledge receipt of the Plant by signing the Owner's Despatch Note and signature of the Despatch Note shall be conclusive evidence of delivery of the Plant in good order and condition and in accordance with the terms of the Contract. The risk in the Plant shall pass to the Hirer on delivery.
- (d) In the absence of such signed Despatch Note 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 in 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 the terms of the Contract and to the Hirer's satisfaction, provided that where Plant requires to be erected on site, the periods above stated shall be calculated from date of complete erection of Plant. The Hirer shall be responsible for its safe keeping, use in a workmanlike manner within the manufacturers rated capacity and in accordance with its recommendations for use and return on the completion of the hire in equal good order (fair wear and tear excepted).
- (e) If a duly authorised representative of the Hirer is not available to acknowledge receipt of the Plant, the Hirer shall indemnify the Owner against all costs and expenses incurred by the Owner as a result including but not limited to all costs for cranes, delivery and third parties instructed by the Owner to deliver/install the Plant.
- (f) The Hirer shall when hiring Plant without Owner's operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the Plant. If such Plant be 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.
- (g) The current Inspection Report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner if requested by the Hirer and returned on completion of hire.

### 6. Servicing and Inspection

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

### 7. Timber Mats or Equivalents

- (a) 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 timbers or equivalents the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the Plant to travel over, work on, or be transported over, including for the purpose of delivery and collection.
- (b) Where the Hire is for lifting equipment, any sound timber or other material supplied by the Owner for use with outriggers / stabilisers is provided solely to assist the Hirer and expressly not to relieve him of his legal, regulatory or Contractual obligations to ensure adequate stability of the lifting equipment under the imposed loading.

## 8. Handling of Plant

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 Condition 13) who also shall be responsible for all claims arising in connection with the operation of the Plant by the said drivers / operators / persons. The Hirer shall not allow any other person to operate such Plant without the Owner's previous consent to be confirmed in writing.

## 9. Breakdown, Repairs and Adjustment

- (a) When the Plant is hired without the Owner's driver or operator any breakdown or the unsatisfactory working of any part of the Plant must be notified immediately to the Owner. Any claim for allowance of hire rates during breakdown time will only be considered from the time and date of notification.
- (b) Full allowance for the hire rates and for the reasonable costs of repairs that have been authorised by the Owner will be made to the Hirer for any stoppage due to breakdown of Plant in accordance with Condition 18(b) below.
- (c) The Hirer shall not, except for the changing of any tyre and repair of punctures, repair the Plant without the written authority 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 without awaiting authorisation from the Owner. The Hirer is responsible for all costs incurred in the changing or replacement or any tyre and the repair of any puncture.
- (d) The Hirer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner during the hire period arising from any cause whatsoever (save where arising from an inherent fault in the Plant) and for the payment of hire at the idle time rate as defined in Condition 25 during the period the Plant is necessarily idle due to such breakdown, loss or damage. The Hirer is responsible for the cost of spares and/or repairs due to the theft, loss or vandalism of the Plant. Where such breakdown, loss or damage arises from an inherent fault in the Plant the Owner's sole liability will be at its option to repair or replace the Plant, or to terminate the Contract forthwith, in which case it will have no liability whatsoever to the Hirer for such termination other than to refund to the Hirer pro rata the hire rates, if any, which the Hirer has paid in advance in respect of any period from and including the date on which the Hirer notifies the Owner of breakdown of the Plant.
- (e) The Owner reserves the right to charge the Hirer for any repairs which the Owner deems necessary as a result of damage caused to the Plant. Such repairs will be recharged on an hourly labour rate as advised, and parts will be charged at Manufacturers' List Price plus the Owner's mark up and administration fees. Such charges will not take into account any supplier discount offered to the Owner.

## 10. Other Stoppages

No claims will be admitted (other than those allowed for under "Breakdown" or for "Idle Time", as herein provided), for stoppages through causes outside the Owner's control, including bad weather or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any Plant from soft ground.

## 11. Hire of each Item of Plant as Separate Unit

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 a 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 Conditions):

- (a) the Owner shall have no liability or responsibility for any loss or damage of whatever nature or any failure or delay in or from carrying out his obligations due to or arising through any cause beyond his control and shall be at liberty to cancel or suspend the Contract as a result without incurring any liability arising there from;
- (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 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 financial or economic loss or indirect or consequential loss or damage or whatever nature;
- (c) Whenever the Contract (including these Conditions) provides that any allowance is to be made against hire rates, 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 rates which would otherwise be or become due if the allowance in question had not been made.

## 13. Hirer's Responsibility for Loss and Damage and Indemnity

- (a) For the avoidance of doubt, it is hereby declared and agreed that nothing in this Condition 13 affects the operation of Conditions 4, 5, 8 and 9.
- (b) During the continuance of the hire 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 on a full new replacement basis from whatever cause the same may arise, fair wear and tear excepted, and except as provided in Condition 9 herein, shall also fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or property and any and all liabilities, proceedings, claims, losses, costs or damages made against or incurred by the Owner or caused by or in connection with or arising directly or indirectly out of the storage, transit, transport, unloading, loading, erection or use of the Plant during the continuance of the hire period, or the Hirer's breach or default, performance of the contract, negligence, breach of statutory duty or other act or omission and in respect of all costs and charges in connection therewith whether arising under statute or common law. In the event of loss of or damage to the Plant (except as provided in Condition 9), hire rates shall be continued at idle time rates as defined in Condition 25 until settlement has been effected.
- (c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury due to or arising:
  - (i) Prior to delivery of any Plant to the site (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, always provided 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 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 notice must be given to the Owner by telephone and confirmed in writing to the Owner's office. In relation to any claim in respect of which the Hirer is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's consent in writing.

## 15. Re-Hiring, etc.

The Hirer shall not re-hire, sub-let, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant without the prior written

permission of the Owner and shall keep the Plant free of all liens and encumbrances and protect it 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. The Hirer acknowledges that the Plant is, and shall at all times remain, the property of the Owner.

#### **16. Change of Site**

The Plant shall not be moved from the site to which it was delivered or consigned without the written permission of the Owner.

#### **17. Return of Plant for Repairs**

If during the hire period the Owner decides that urgent repairs to the Plant are necessary he may arrange for such repairs to be carried out on site or at any location of his nomination. In that event the Owner shall be obliged to replace the Plant with similar Plant if available, the Owner (but without prejudice to any of the provisions of Conditions 9 and/or 13) shall pay all transport charges involved. In the event of the Owner being unable to replace the Plant he shall be entitled to determine the Contract forthwith (but without prejudice to any of the provisions of Conditions 9 and/or 13) by giving written notice to the Hirer. If such determination occurs:

- (a) within three months from the commencement of hire, the Owner (but without prejudice to any of the provisions of Conditions 9 and/or 13) shall pay all transport charges involved, or,
- (b) more than three months but less than six months from the commencement of hire, the Owner (but without prejudice to any of the provisions of Conditions 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. Where the Plant is accompanied by the Owner's driver or operator, the Hirer shall sign the employee's Time Record Sheets daily or weekly. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the Time Record Sheets.
- (b) Full allowance will be made for hire rates during breakdown periods resulting from inherent mechanical or electrical faults or absence of driver or operator supplied by the Owner except where breakdown is due to misuse, negligence, acts or omissions of the Hirer or third parties. Any such allowance shall be for the period from notification to the Owner of the breakdown until repair or replacement of the Plant
- (c) Breakdown time in respect of such periods shall be allowed for not more than 8 hours Monday to Thursday and not more than 7 hours for Friday less the actual hours worked.
- (d) Plant shall be hired out either;
  - (i) For a stated minimum number of hours per day or per 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 idle time rates.
- (f) In the case of Plant which requires to be dismantled for the purpose of transportation, if the Owner agrees to a modification of the hire rate for the period required for assembling on site and dismantling upon completion of hire, such modification of the hire rate and the period for which it shall apply shall be stated on the Despatch Note and/or order confirmation.
- (g) The Hirer will pay the hire rates specified in the Despatch Note and/or order confirmation for the hire period.
- (h) Once the minimum hire period has expired the Owner may increase the hire rates for the Plant by giving one week's notice of the increase to the Hirer
- (i) Where a deposit is required from the Hirer for the Plant, then this must be paid to the Owner, prior to the Plant being either collected or delivered from the Owner's depot.
- (j) A Hirer who has an approved credit account shall pay the Owner's hire rates no later than 30 days after the date of each invoice. If a sum remains unpaid after the due date, the payment of all hire rates, no matter how recent, shall become due immediately.
- (k) In the event that the Owner refers any matter relating to the recovery of any amounts owing pursuant to the Contract of Hire to its legal department, the Owner shall be entitled to levy an administration fee of £50.00 in respect of each such referral. This fee is in addition to any sums recoverable by the Owner exercising his statutory right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debt (Interest) Act 1998, as amended by the Late Payment of Commercial Debt Regulations 2002.
- (l) The Hirer shall not be entitled to withhold payment of any amount payable to the Owner. In the case of any short delivery or delivery of damaged Plant to the Hirer, the Hirer shall still be liable for the balance of Plant that was correctly delivered in working order.
- (m) Plant not returned before the start of any holiday period will be deemed to be in use during the holiday period and will be charged in accordance with the terms of the Contract. For the avoidance of doubt, the Plant is deemed on-hire during public/bank holidays and no reduction in hire charges will be made.

#### **19. Plant Hired On a Daily Basis Without Qualification as to Hours**

NOT USED

#### **20. Plant Hired by the Week or Month Without Qualification as to Hours**

NOT USED

#### **21. Plant Hired by the Week or the Hour for a Minimum of 40 Hours Per Week or a Day of 8 Hours**

NOT USED

#### **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 Condition 26.

#### **23. Commencement and Termination of Hire (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, (an allowance shall be made of not more than one days hire rate each way for travelling time) or when the Owner provides an off-hire number to the Hirer in accordance with Condition 24(c) below, whichever is the earlier. In any case, the Hirer shall remain fully liable for the Plant until it is received back at the Owner's named depot or is collected by the Owner. If the Plant be used on day of travelling, full hire rates shall be paid for the period of use on that day. If more than one day be properly and unavoidably occupied in transporting the Plant, a hire rate 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 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 when the Owner provides an off-hire number to the Hirer in accordance with Condition 24(c) below, whichever is the earlier.
- (b) An allowance of not more than one days travelling time shall be allowed when the Plant is travelling to a site other than that specified in the Contract provided that:
  - (i) consent to such transfer has been given by the Owner under Condition 16, and,
  - (ii) the Plant is moved by means other than under its own power, and,
  - (iii) the Plant shall have been on the site specified in the Contract or on any other site to which consent to transfer has been given under Condition 16 for a period of at least 14 days.

#### **24. Notice of Termination of Contract**

- (a) Where the period of hire is indeterminate or having been defined becomes indeterminate the Contract shall be determinable by seven days notice in writing given by either party to the other except in cases where the Plant has been lost or damaged beyond economic repair (when the

Contract shall be immediately terminated) or where any of the events referred to in Condition 33(b) below occur. Notwithstanding that the Owner may have agreed to accept less than 7 days notice of termination, the Hirer's obligation under Condition 31 remains until the plant is returned to the Owner in accordance with Condition 31 or until the Owner has collected the plant within 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 Condition 24.

- (b) For the avoidance of doubt, and notwithstanding any other rights which the Owner may have, if within the minimum hire period the Owner gives notice to terminate the Contract due to breach by the Hirer of the terms of the Contract (under Condition 33(b) below) or the Hirer gives notice to terminate the Contract for any reason or purports to terminate the Contract by returning the Plant or by giving incorrect notice of termination then the Hirer shall immediately pay to the Owner such sums as would have otherwise become due during the remainder of the minimum hire period or correct notice period, whichever applies and all costs of third parties instructed by the Owner to dismantle the Plant.
- (c) Notice of termination shall be given by the Hirer in the following manner:
  - (i) The Hirer shall contact the Owner's depot from which the Plant was ordered and request that the Plant be off-hired; and
  - (ii) Each item of Plant to be off-hired must be individually identified to enable the Owner to provide a unique off-hire number to the Hirer.
- (d) Where the Hirer has provided a valid notice of termination in accordance with these Conditions the Owner shall not charge the Hirer any hire rates for any period for which an off-hire number has been obtained, but the Hirer shall still be responsible for such hire rates for those items if he is unable to provide the off-hire number to the Owner for that item of Plant and shall remain fully liable for the Plant until it is received back at the Owner's named depot or is collected by the Owner.
- (e) When the correct notice of termination has been given but the Plant is not made available for collection due to no fault on the part of the Owner, such Plant shall be deemed with immediate effect to be placed back on-hire and all hire rates shall continue to be payable in respect of such Plant. The Owner is entitled to charge and be indemnified by the Hirer for any waiting time, wasted journeys or the expenses incurred.
- (f) Where the Contract or any part of it is to be terminated by the Hirer purchasing the Plant, hire rates will continue to be payable until such time as the Owner has received payment for the agreed purchase price of the Plant

#### **25. Idle Time**

The 'Idle Time' rate shall be two thirds of the hire rate or such other idle time as is stated in the order confirmation. If Plant works for any time during the minimum hire period then the whole of that minimum hire period shall be charged as working time. In any case no period less than one day shall be reckoned as idle time save for as provided for in Condition 18(e). Where an "All-In" rate is charged, idle time is charged 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 contracted 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 employer'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 and fares for drivers, operators and any person supplied by the Owner, similar expenses incurred at the beginning and end of the hire period and where appropriate the 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**

- (a) 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 and shall indemnify the Owner in respect of all damages, losses and costs arising as a result of the incorrect grade/type of fuel, oil or grease being used.
- (b) The Owner shall ensure that the Plant is full of fuel at the commencement of the hire period and the Hirer shall ensure that is returned/made available for collection with a full tank of fuel. If the Hirer fails to return/make available for collection the Plant with a full tank of fuel the Owner shall charge the Hirer for refilling the tank at the fuel price displayed at the branch. This requirement is waived when the Hirer has purchased a prepaid fuel package and when the Hirer has chosen to bring the Plant back empty on the basis that it will reimburse the Owner accordingly.

#### **29. Sharpening of Drills/Steels etc**

The cost of re-sharpening shall be borne by the Hirer.

#### **30. Owner's Name Plates**

The Hirer shall not remove, deface or cover up the Owner's nameplate or mark on the Plant indicating that it is his property.

#### **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 named depot or other agreed location on completion of the hire period.

#### **32. Government Regulations**

The Hirer will be responsible for compliance with all relevant laws, statutes and regulations issued by the Government or Local Authorities, including but not limited to regulations under the Factories Acts, Health and Safety at Work legislation etc. and observance of the Road Traffic Acts should they apply, including the cost of Road Fund Licences and any insurances, consents and permits necessary thereby, in connection with the use or hire of the Plant.

#### **33. Protection of Owner's Rights**

- (a) The Hirer shall not indicate that it is anyway affiliated with or associated with the Owner and the Hirer shall not use any of the Owner's patents, trademarks, designs, models or other similar intellectual or industrial property rights.
- (b) If the Hirer shall do any of the following: make default in punctual payment of any sums due to the Owner for hire of Plant or other charges; fail to observe and perform the terms and conditions of this Contract; suffer any distress or execution to be levied against him; be unable to pay his debts as they fall due; make or propose to make any arrangement with his creditors or become insolvent or take steps in preparation for any form of insolvency (including without limit liquidation, bankruptcy, receivership, administrative receivership or administration); abandons the Plant; 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 or the Plant is adversely effected or endangered; this Contract may forthwith be determined by notice from the Owner to the Hirer (notwithstanding that the Owner may have waived some previous default or matter of a like nature). The Contract shall thereupon be deemed determined by reason of the Hirer's breach and it shall be lawful for the Owner to retake possession of the said Plant (at the cost of the Hirer) and for that purpose enter into or upon any premises where the same maybe and determination of the hiring under this Condition shall not affect the right of the Owner to recover from the Hirer any monies due to the Owner under the Contract (which shall become payable immediately) or any of the Owner's right and remedies. In particular, without limitation, the Owner shall be entitled to claim the hire rates outstanding as at the date of determination of the hire under this Condition 33, return transport charges under Condition 31, and damages for the Hirer's actual or deemed breach of the Contract under this Condition 33.

#### **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 change in the normal weekly hours in the industry in which the Hirer is engaged or
- (b) the Contract being made with reference for a 5 day week of other than 39 hours.

Conditions 1(d) and (e), 18c and (d), 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) The proper law of the Contract shall be English Law.
- (b) The person (if any) specified in the Contract to act as adjudicator may be named in the Offer. The specified nominated 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 judgement and enforcement in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement, or deduction.

### 36. Cancellation

If following the placing of an order for Plant with the Owner the Hirer cancels its order for Plant for any reason other than a delay in delivery, the Hirer will indemnify on demand the Owner from and against all losses and expenses suffered by the Owner in connection with that cancellation.

### 37. Insurance

- (a) The Hirer shall from the date of delivery of the Plant to the Hirer (or if earlier, from the commencement of the Contract) and throughout the continuance of the Contract (without prejudice to any liability of the Hirer to the Owner) at his own expense, effect and maintain such insurance in relation to the Plant as the Owner may require from time to time, with a reputable insurance company and subject thereto such insurance will be in an amount equal to the 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 ownership, presence or use of the Plant. If the Hirer fails to effect and maintain such insurance, the Hirer shall be liable for and indemnify the Owner against all loss or damage from any cause whatsoever, including, but without limitation, all risk of third party liability arising out of the ownership, presence or use of the Plant.
- (b) The Hirer will upon request by the Owner at any time produce to the Owner every such policy of insurance and the receipt for the current year's premium.
- (c) The interest of the Owner in the Plant shall be noted on the policy of insurance which policy shall:
  - (i) provide that all monies payable thereunder shall be payable to the Owner or as it may direct without reference to the Hirer; and
  - (ii) not be capable of lapse, cancellation or alteration by the insurers (at the request of the Hirer or otherwise) other than by at least 30 days' prior notice in writing to the Owners.
- (d) The Hirer irrevocably authorises the Owner to act as its agent for recovering all monies payable under any such insurance policy and to give a good discharge to the insurers for all monies payable thereunder and such monies shall at the Owner's entire discretion be applied as directed by the Owner.
- (e) The Hirer shall not use or allow the Plant to be used for any purpose not permitted by the terms and conditions of any policy of insurance for the time being relating to the Plant nor do or allow to be done any act or thing which might entitle the insurers to cancel the same or render any monies irrecoverable thereunder.
- (f) In the event of any loss of or damage to all or any part of the Plant or any other occurrence which may give rise to a claim under any insurance the Hirer shall give immediate notice to the Owner and shall make or assist in the making of any appropriate claim or claims under the said insurance policy in such manner as the Owner shall require and shall not in any manner settle or compromise any such claim without the prior written consent of the Owner, and upon the Owner's request the Hirer shall assign to the Owner at the expense of the Hirer all rights, claims and benefits under such policy.

### 38. Termination

- (a) Without prejudice to any of the Owner's other rights the Owner may immediately terminate this Contract if any of the events referred to in Condition 33(b) or the following occurs or is likely to occur:
  - (i) the Hirer (and/or any other company belonging to the group of companies to which the Hirer belongs as of the date of the Contract ('the Hirer Group') is in breach of any other Contract between the Hirer (or any other Hirer Group company) and the Owner (or any of the Owner's associated companies);
  - (ii) the landlord of the premises where the Plant is kept threatens to take any steps to distrain on the Plant or, in Scotland, to exercise his rights of hypothec over them;
  - (iii) the Hirer or the Hirer Group undergoes a change of control or if the whole or a major part of the Hirer's or the Hirer group's business is transferred to a third party ("control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Hirer and/or the Hirer Group, whether through ownership of voting securities (including shares of common stock), by contract or otherwise);
  - (iv) the Hirer fails to pay its insurance premiums on time;
  - (v) there is a material adverse change in:
    - a. The financial condition of the Hirer and/or the Hirer Group, or
    - b. The business operations of the Hirer and/or the Hirer Group, which can be reasonably be expected by the Owner to affect adversely the ability of the Hirer to pay all amounts due to the Owner
  - (vi) the Hirer gives the Owner false and misleading information.
- (b) Without prejudice to the Owner's other rights and remedies under this Contract, upon expiry or termination of this Contract for any reason:
  - (i) Where the Hirer has failed to return the Plant to such location as the Owner shall agree the Hirer shall be liable for continuing hire rates until the Plant is returned or repossessed and until any repairs required under Condition 38(b)(ii) below are completed to the satisfaction of the Owner;
  - (ii) the Hirer shall pay the Owner by way of agreed compensation a loss of income charge equivalent to two thirds of the hire charge arising as a result of the Owner being unable to hire out the Plant because it needs to be repaired (save where this is due to an inherent fault in the Plant) or is a write-off and cannot be repaired or has been stolen and the Owner is waiting to receive full repayment of the Plant's replacement value.
  - (iii) the Hirer shall be liable for the cost of all repairs required to put the Plant into good and serviceable repair and condition save where the repair is required as a result of an inherent fault in the Plant;
  - (iv) Where the Hirer has requested the Owner to make modifications to the standard specification to the Plant and has terminated the Contract prior to the end of the minimum hire period the Owner shall also recharge to the Hirer the full costs in putting back the Plant to its original specification including but not limited to the Hirer's own livery, additional security systems and any other accessories; and
  - (v) The Hirer shall pay to the Owner all costs to the Owner of breaking any funding arrangement financing the hiring of the Plant.

### 39. Environmental Policy

- (a) The Owner has a strict Environmental Policy. It is the Hirer's responsibility to ensure that all Plant is returned clean and free from waste materials; effluent tanks, fuel bowsers and tanks must be emptied.
- (b) The Plant shall not be used to contain dangerous or hazardous substances save where fuel bowsers and tanks are intended to be used for the purpose of storing dangerous and hazardous substances, and the Hirer shall ensure that the Plant is safe and properly used without avoidable risk to health or the environment.
- (c) Collection may be refused for Plant (including but not limited to fuel bowsers and tanks) which has not been cleaned/emptied or which has

contained dangerous or hazardous waste. Such Plant, fuel bowsers or tanks will be cleaned by a specialist contractor, the cost of which shall be recharged to the Hirer.

#### 40. Management

- (a) The Hirer agrees that it shall have overall responsibility for the management and use of the Plant and that it shall comply with the requirements of all applicable legislation, including but not limited to the Management of Health and Safety at Work Regulations 1999 (SI 1999 No. 3242) and the Provision and Use of Work Equipment Regulations 1998 (SI 1998 No. 2306).
- (b) If advice or information is sought from and given by any representative of the Owner, the Hirer understands and accepts that such advice or information is given without responsibility and does not relieve or reduce the Hirer's requirement to make his own independent assessment as outlined above.

#### 41. Use of Hirer's Information

- (a) The Hirer agrees to authorise the use of information provided by the Hirer to the Owner ('the Information') as set out in this Condition 41 and confirms that it is entitled to do so.
- (b) In holding and processing the Information about the Hirer the Owner must comply with the principles of the Data Protection Act 1998. In particular the Owner will keep confidential and use only for purposes of which the Hirer is aware any Information provided by the Hirer and that which the Owner already has or receives from enquiries the Owner makes about the Hirer (for example from trade references) or from any other company in the Owner's group) however the Hirer agrees that the Owner (or any agent, representative or subcontractor on its behalf) may use and disclose it at any time:
  - (i) to provide the services which the Hirer has requested and administer, service, enforce and settle the Hirer's account;
  - (ii) to identify the Hirer and assist with debt tracing;
  - (iii) to assist in the prevention and detection of money laundering or crime;
  - (iv) to make searches at and receive information about the Hirer from one or more credit reference and/or fraud prevention agencies and/or any other company in the Owner's group so that the Owner can assess the Hirer's credit worthiness, verify the Hirer's identity and help the Owner to prevent or detect fraud or other criminal activity. It is important that the Hirer gives the Owner accurate information - if the Hirer provides false or inaccurate information and the Owner suspects fraud, the Owner shall record this and may pass information to financial and other organisations involved in the prevention of fraud and other companies in the Owner's group in order to protect itself and its customers from fraud. The Hirer should note that credit reference and/or fraud prevention agencies will add details of the Owner's search to the Hirer's record and this may be seen by other organisations that make searches;
  - (v) to disclose to any proposed assignee, transferee or chargee at the Owner's request under this Contract, including without limitation their insurers and advisers including, any purchaser of all or any of the Owner's assets or shares;
  - (vi) for credit scoring or other automated decision making systems;
  - (vii) to carry out market research about the Owner's services or products or those of third parties; and
  - (viii) to contact the Hirer (via mail or telephone, (including automated dialling)) about services or products offered by the Owner, other group companies or by other third parties, which Owner believes the Hirer may be interested in. Telephone calls between the Hirer employees and Owner may be monitored or recorded to help improve the Owner's quality of service and for training purposes. In addition the Owner may pass such information to other group companies or third parties so they can contact the Hirer directly about services or products offered by them. The Hirer has a right at any time to stop the Owner from contacting the Hirer or passing its information on for this purpose by writing to the Owner's Data Protection Compliance officer at its registered office address.
- (c) Except as provided above the Owner will not disclose information about the Hirer unless the Hirer has the Hirer's consent or the Owner is legally obliged to disclose or the Owner has a duty to the public to disclose or disclosure is required to protect the Owner's interests.
- (d) In order to provide the services the Hirer has applied for it may be necessary for the Owner to employ agents or subcontractors to process information on its behalf. These agents or subcontractors may be in other countries, including countries outside the European Economic Area. Where this is the case the Owner will ensure that anyone to whom it passes the Hirer's information agrees to afford the Hirer the same degree of protection as the Owner gives the Hirer's data.
- (e) Under the Data Protection Act 1998 the Hirer is entitled to ask the Owner in writing to provide copies of certain data the Owner holds about it upon payment of an appropriate fee.
- (f) Any requests pursuant to the provisions above or any queries arising from the Owner's data protection policy should be addressed to the Owner's Data Protection Compliance Officer at the Owner's registered office address shown on the Despatch Note and order confirmation.

#### 42. General

- (a) The reliance on or enforcement of any of the terms contained herein shall give no right to the Hirer to cancel a Contract.
- (b) Any notice to be given by either party shall be sent to the other party's registered office or, where the Hirer is an individual or firm, to the Hirer's last known address. All notices shall be in writing in English and may be served first class pre-paid post or confirmed telefacsimile with correct answerback of electronic mail and shall be deemed to have been given on the next working day following despatch in the case of notices sent by telefacsimile or electronic mail or three days after posting in the case of postal services.
- (c) The Owner shall be entitled to carry out its obligations under the contract through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.
- (d) Nothing in the Contract shall create, or be deemed to create a partnership or agency relationship between the parties.
- (e) A failure by the Owner to exercise or enforce any rights conferred upon it by the Contract shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- (f) The Owner shall be at liberty to set off from sums due to the Hirer any of all sums due from the Hirer to the Owner in respect of any contract and to withhold sums due to the Hirer in the event of any claim or dispute in respect of the contract.
- (g) The Contract may only be varied or amended by agreement in writing signed on behalf of each of the parties by a duly authorised representative.
- (h) In the event that any of these Conditions is held to be unlawful, unenforceable or invalid by any Court or other competent body, this shall not in any way affect the validity of the remainder of such Condition and the remainder of the other Conditions.
- (i) The Owner will ensure that the Hirer receives operating instructions for the type of Plant being supplied.
- (j) The Owner shall be entitled to assign its rights and obligations under the Contract, whether wholly or in part, for syndication purposes (or for any other purposes) to another company belonging to the General Electric group of companies or to one or more third parties. The Hirer hereby permits the Owner to disclose any financial information received from the Hirer to such other party belonging to the General Electric group of companies or to such third parties (e.g. third party credit institutions, having expressed interest in participating in such assignment), to the extent deemed necessary by the Owner to facilitate any credit analysis required by these parties.
- (k) It is the responsibility of the Hirer to ensure the safekeeping of all Plant hired which is not returned to the Owner before the start of any holiday period.
- (l) All electrical Plant must be connected to the correct power supply by a fully qualified and suitably competent Electrician of the quality and with the skills and experience necessary for the proper connection of such Plant. Under no circumstances should electrical Plant be used unless it is correctly earthed.
- (m) The Plant is offered subject to availability on the day requested.
- (n) The Hirer shall not affix cause or permit the Plant to be affixed to the land so as to become a fixture to the land.

