

Trench Control Ltd.

Naas Industrial Estate

Naas, Co. Kildare

Phone: 045 ~ 866944

Fax: 045 ~ 875639

General Conditions for the Hiring of Plant

1. Definitions

- a. The "Owner" is the Company, firm or person letting the plant on hire and includes their successors, assigns or personal representatives.
- b) The "Hirer" is the Company, firm or person, corporation or public authority 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 thereof, which the Owner agrees to hire to the Hirer.
- d. A "day" shall be 8 hours unless otherwise specified in the Contract.
- e. A "week" shall be seven consecutive days.
- f. A "working week" covers the period from starting time on Monday to finishing time on Friday.
- g. The hire period shall commence from the time when the plant leaves the Owner's depot or place where last employed and shall continue until the plant is received back at the Owner's named depot or equal.

2. Extent of Contract

No conditions other than specifically set forth in the Offer and Acceptance and herein shall be deemed to be incorporated in or to form part of the Contract.

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 unloading the plant at site and any personnel supplied by the Owner shall be deemed to be under the Hirer's control and shall comply with all directions of the Hirer.

5. Delivery in Goods Order and Maintenance: Inspection Reports

- a. Unless notification in writing to the contrary is received by the Owner from the Hirer in the case of plant supplied with an operator within four working days, and in the case plant supplied without operator within three working days, of the plant being delivered to site, the plant shall be deemed to be in goods 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 completed erection of plant. The Hirer shall be responsible for its safekeeping use in a workmanlike manner within the Manufacturer's rated capacity and return on the completion of the hire in equal good order (fair wear and tear expected).
- b. The Hirer shall when hiring plant without Owner's operator or driver take all reasonable steps to keep himself acquainted with the state and conditions of the plant. If such plant be continued at work or in use in an unsafe and unsatisfactory state, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom.
- c. 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 possible, such work will be carried out at times to suit the convenience of the Hirer.

7. Breakdowns, Repairs and Adjustment

- a. When the plant is hired without the Owner's driver or operators any breakdown or the unsatisfactory working of any part of the plant must be notified immediately to the Owner. Any claim for breakdown time will only be considered from the time and date of notification.
- b. Full allowance will be made to the Hirer for any stoppage due to breakdown of plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of the Contract.
- c. The Hirer shall not repair the plant without the written authority of the Owner. The Owner will make allowance for hire charges and for the reasonable cost of repairs to the Hirer where repairs have been authorised.
- d. The Hirer shall be responsible for all expensive involved arising from any breakdown and all loss or damage incurred by the Owner due to the Hirer's negligence, misdirection or misuse of the plant, whether by the Hirer or his servants, and for the payment of hire at the appropriate idle time rate during the period the plant is necessarily idle due to such breakdown or damage. The Owner will be responsible for the cost of repairs to the plant involved in breakdowns from all other causes and will bear the cost of providing spare parts.

8. 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 for soft ground

9. Loss of Use of Other Plant due to Breakdown

Each item of plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss or working time by any other unit or units of plant working in conjunction therewith, provided that where two or more items of plant are hired together as a unit, such item shall be deemed a unit for the purpose of breakdown.

10. Consequential Losses

Save in respect of the Owner's liability if any Clauses 5, 8 and 9, the Owner accept no liability or responsibility for any consequential loss or damage due to or arising through any cause beyond his control.

11. Hirer's Responsibility for Loss or Damage

- a. For the avoidance of doubt it is hereby declared and agreed that nothing in this clause affects the operation of clauses 5 and 8 of the agreement.
- b. During the continuance of the hire period the Hirer shall subject to the provisions referred to in such paragraph a) make good to the Owner all loss of or damage to the plant from whatever cause the same may arise, fair wear and tear excepted and except as provided in Clause 7 herein, and shall also fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the use of the plant and in respect of all costs and charged in connection therewith whether arising under statute or common law. In the event of loss of or damage to the plant, hire charges shall be continued at idle time rates until settlement has been effected.

- c. Notwithstanding the above the Owner shall accept liability for damage, loss or injury due to or arising
 - i. prior to delivery of any plant to the site of the Hirer where the plant is in transit by transport of the Owner or as otherwise arranged by the Owner.
 - ii. during the erection of any plant, where such plant requires to be completely erected on the site, always provided that such erection is under the exclusive control of the Owner or his Agent.
 - iii. during the dismantling of any plant, where plant requires to be dismantled after use prior to removal from site, always provided that such dismantling is under the exclusive control of the Owner or his Agent.
 - iv. after the plant has been removed from the site and is in transit on to the Owner by transport of the Owner or as otherwise arranged by the Owner.
 - v. Where plant is travelling to or from a site under its own power with a driver supplied by the Carrier.

12. 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, and in respect of any claim not within the Hirer's agreement for indemnity, no admission, offer, promise of payment or indemnity shall be made by the Hirer without Owner's consent in writing.

13. Re-Hiring, Etc.

The plant or any part thereof shall not be re-hired, sub-let or lent to any third party without the written permission of the Owner.

14. Change of Site

The plant shall not be moved from the site to which it was delivered or consigned without the authority of the Owner, such authority to be confirmed in writing.

15. 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 nomination. In that event the Owner shall be obliged to replace the plant with similar plant if available, the Owner paying 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 by giving written notice to the Hirer. If such determination occurs;

- a) within three months from the commencement of hire the Owner shall pay all transport charged involved or
- b) more than three months but less than six months from the commencement of hire the Owner shall be liable only for the cost of reloading and return.

16. 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 Sheet 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 breakdown periods resulting from mechanical or electrical faults or absence of driver or operator supplied by the Owner except where breakdown is due to the Hirer's misuse, misdirection or negligence.
- c) Breakdown time shall be allowed for not exceeding 8 hours each day on Monday to Friday less the actual daily hours worked.
- d) Plant shall be hired out at "per week" or "per hours" for a minimum period, for a day of 8 hours or for a week or 40 hours or such period as the end of the hire period shall be charged pro rata.

17. Plant Hired on a Daily Basis Without Qualification as to Hours

The full daily rate will be charged on a daily basis irrespective of the hours worked except in the case of breakdown for which the Owner is responsible, when the actual hours worked will be charged pro rata to the average working day. No hire charge shall be made for Saturday and/or Sunday unless the plant is actually worked.

18. Plant Hired by the Week or Month without Qualification as to Hours.

The weekly or monthly rate shall be charged irrespective of the number of hours worked except in the case of breakdown for which the Owner is responsible when an allowance at the rate of one-fifth of the agreed weekly rate of one-twentieth of the agreed monthly rate will be made for each full working day broken down calculated on the nearest half working day. No allowance will be made for breakdown on Saturdays or Sundays.

19. Plant Hired by the Week or the Hour for a Minimum of 40 Hours per Week or a Day of 8 Hours

If no breakdown occurs the full hire for the minimum period in the Contract will be charged and an additional pro rata charge will be made for hours worked in excess of such minimum period. The stipulated minimum number of hours can be worked at any time during the minimum period of a week. Allowance will be made for breakdowns up to 8 hours providing always that where the actual hours worked are in excess of the minimum period less breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. The minimum work of 40 hours shall be reduced by 8 hours Monday to Friday for each day's statutory holiday occurring in such week provided that the plant does not work on the holiday.

20. "All-In" Rates

Where "All-In" rates are charged by agreement the minimum period shall be as defined in the Contract and in accordance with the hire rates and terms contained therein, subject to the provisions of Clause 24.

21. 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 or equal.
- b) An allowance of not more than one day's 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 Clause 14 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 consents to transfer has been given under Clause 14 for a period of at least 14 days.

22. Notice of Termination of Contract

Where the period of hire is indeterminate or having been defined becomes indeterminate to Contract shall be determinable by either party by way of a) 7 days written notice by one party to the other b) faxed notice by one party to the other c) telephoned notification which will only be accepted if verified by issued of Off-Hire code number by Owner to Hirer during such telephone notification. A claim of telephoned Off-Hire notification will not subsequently be accepted without quotation of Off-Hire code number issued to Hirer at time of termination. In the event of the Hirer desiring to terminate the Contract and failing to give such notice, hire for the period of 7 Days shall be chargeable at normal rates in lieu. Notice given by the Hirer to the Owner's driver or operator shall not be deemed to constitute compliance with provisions of the Clause.

23. Idle Time

When plant works for any time during a guaranteed minimum period, then the whole of that guaranteed minimum period shall be charged as working time. If the plant is idle for the whole of a guaranteed minimum period, the charge shall be two thirds of the hire rate. In any case no period less than one day shall be reckoned as idle time. Where an "All-In" rate is charged, idle time is charged on the machine element only. Full rate will be charged as additions at cost by the Owner and shall be admitted and paid by the Hirer.

24. 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 increase before and/or during the hire period arising from awards under national wage agreements and/or from increase, 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.

25. Travelling and Fares

Travelling time and fares for operators, similar expenses incurred at the beginning and end of the hire period and where appropriate the operator's return fare to his home at period in accordance with the appropriate national agreement will be chargeable at cost. No charge shall be made by the Owner for any such expenses incurred by other employees of the Owner of the purpose of servicing, repair or maintenance of plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the plant.

26. Fuel, Oil and Grease

Fuel, oil and grease shall, when supplied by the Owner, be charged at net cost or an agreed estimate of net cost, and when supplied by the Hirer, shall be of a grade or type specified by the Owner.

27. Sharpening of Drills/Steels, Etc.

Where appropriate, the cost of re-sharpening shall be borne by the Hirer.

28. Owner's Name Plates

The Hirer shall not remove, deface or cover up the Owner's name plate or mark on the plant indication that it is his property.

29. 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 equal to the site and return to named depot or equal on completion of the hire period.

30. Government Regulations

The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including Regulation under the Factories Acts, Health and Safety at Work, etc. Act and observance of the Road Traffic Acts should they apply, including the cost of Road Traffic Licences and insurance made necessary thereby, save that if and during such time as the plant is travelling, whether for full or part journey from Owner to site and site to Owner under its own power with a driver supplied by the Owner not the Hirer shall be responsible as aforesaid.

31. Protection of Owner's Rights

- a) The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the plant except as provided under Clause 13 and shall protect the same against distress, execution or seizure and shall indemnify the Owner against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of the Government requisition.
- c) If the Hirer make default in punctual payment of all sums due to the Owner for hire of plant or other charges or shall fail to observe and perform the terms and condition of this Contract, or if the Hirer shall suffer any distress or execution to be levied against him or make or purpose to make any arrangement with his creditors or being a Company, shall go into liquidation (other than a member's voluntary liquidation) or shall do or shall cause to be done or permit or suffer any act or thing whereby the Owner's rights in the plant may be prejudiced or put into jeopardy, this Agreement shall forthwith be terminated (without any notice or other act on the part of the Owner and notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature), and it shall thereupon be lawful for the Owner to retake possession of the said plant and for that purpose enter into or upon any premises where the same may be and the determination of the hiring under this Condition shall not effect the right of the Owner to recover from the Hirer any moneys due to the Owner under the Contract or damages for breach thereof.

32. Changes in Normal Working Week

The foregoing provisions have been framed upon the basis of the Hirer working a 5 day week of 40 hours; it is hereby agreed that in the event of

- a) There being any change in the normal weekly hours in the industry which the Hirer is engaged or
- b) The Contract being made with reference to a 5 day week being worked by the Hirer (either of 40 hours or of such number of hours as may constitute the normal working week in the said industry).
Clauses 1(d) and (f), 16(c) and (d), 18 and (in regard to breakdown allowance and reduction for statutory holidays) 19 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.

33. Enforced Transference of Contract

In the event of any time of items of the plant comprised in this hire Contract being used by the Hirer on or in connection with a contract for the construction of works or buildings and of a forfeiture of such contract being made by the Employer thereunder, the Owner will upon request in writing made by the Employer within seven days after the date when such forfeiture has become effective and on such Employer undertaking to pay all hire charges therefore from such last mentioned date, hire such item or items to such Employer for the remainder of the period during which such item or items were hired to the Hirer upon the same terms in all respects as are herein contained save that notwithstanding the provisions of Clause 31 hereof such Employer shall be entitled to permit the use thereof by any other contractors employed by him for the purpose of completing the works or buildings comprised in such contract.

34. Settlements of Disputes – Arbitration

- a) If a dispute of difference of any kind whatsoever shall arise between the parties to this Agreement, either party may refer the dispute of difference to the arbitration of a person to be agreed upon by the parties, by giving notice to the other party.
- b) If the parties fail to appoint an arbitrator within one calendar month of either party serving notice on the other party a written Notice to Concur in the appointment of an arbitrator, the dispute or difference shall be referred to a person to be appointed by the Chairperson for the time being of the Chartered Institute of Arbitrators (Irish Branch).
- c) If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one calendar month of the vacancy arising, fill the vacancy, then either party may apply to the Chairperson for the time being of the Chartered Institute of Arbitrators (Irish Branch) to appoint another arbitrator to fill the vacancy.
- d) Any reference to arbitration shall be deemed to be a submission to arbitration within the meaning to the Irish Arbitration Act 1954 and 1980 and any statutory re-enactment thereof for the time being in force. The award of the arbitrator will be binding on the parties.