



McFadyens Contractors (Campbeltown) Ltd Operated Plant Hire Terms and Conditions SPOA (2007 Edition) General Conditions of Hire



Definitions

(a) In these Conditions:-

"Delivery" means 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.

"Hire Charges" means the various charges detailed in Condition 12.

"Hirer" means the person, firm or company taking the Plant on hire, including their successors, representatives and agents.

"Off Hire Number" means a unique number provided by the Owner 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 any machine, equipment or part of them 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 shall be incorporated into and shall govern each contract ("the Contract") for the hire of 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 an 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 limit or restrict 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;

(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 subject to such control or direction; 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 there; 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 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 these 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. The Plant shall be deemed to be in good order (save for latent defects and defects not reasonably ascertainable by inspection) 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, ensure its safekeeping, and 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.

(c) 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. 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.

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

6. Breakdown

(a) Except as otherwise provided in Condition 5(a), any breakdown or unsatisfactory working of Plant must be notified to the Owner within 24 hours of its discovery by the Hirer or his representative. Breakdown time claims will only be considered from the time 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 or unsatisfactory working of Plant, not readily repairable, the Owner shall be entitled to supply 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 unsatisfactory working 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 with it.

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

7. Allowances

(a) Provided notification has been made to the Owner in accordance with these Conditions, the Hirer will not be charged for any stoppages for normal working repairs or due to breakdown of Plant caused by an inherent fault or fair wear and tear. The Hirer's only remedy for such stoppages shall be an allowance up to the amount of Hire Charges otherwise due.

(b) No allowance will be made for stoppages resulting from any other cause for which the Owner is not responsible (including bad weather and ground conditions).

8. Servicing and Inspection

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

9. Hirer's Responsibilities

(a) Except as otherwise provided in Conditions 5 & 6, the Hirer shall reimburse the Owner for all loss or damage to the Plant (fair wear and tear excepted) during the Period of Hire whether or not caused by fault on the part of the Hirer and shall indemnify the Owner in respect of all claims by third parties for any loss, injury or damage arising out of the storage, transit, transport, unloading, loading, erecting, dismantling and/or use of the Plant and all associated costs and charges.

(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) and indemnify the Owner against all loss or damage to the Plant not recoverable under the policy of insurance.

(c) During the Period of Hire the Hirer shall, in the event of loss or damage to the Plant whatsoever caused, be liable for the Hire Charges until 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 Hirer shall be responsible for the cost of the changing and repair of any tyre punctures and shall arrange for the tyre(s) to be repaired or replaced without awaiting the Owner's consent. The Hirer shall ensure that all replacement tyres meets the manufacturer's recommended specification and that all repairs are carried out to the highest standard of 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 (including for delivery and collection) without suitable timbers or equivalents, the Hirer shall supply and lay suitable timbers or equivalents in a suitable position.

(g) The Hirer shall be responsible for the unobstructed access to, and (unless otherwise agreed in writing) loading, unloading, erecting and/or dismantling of the Plant at the Hirer's site. Any personnel supplied by the Owner for such work at the Hirer's site shall be deemed to be under the direction and control of the Hirer who shall be responsible for all claims arising out of the work.

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 who shall not permit any person other than the operator to operate the Plant without the Owner's prior written consent. During the Period of Hire the Hirer shall be responsible for the operator's 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 made against the Owner by (a) third parties as a consequence of any acts or omissions of the operator, including negligence or breach of statutory duty; and/or (b) 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 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) (1) Where the Plant is hired at a rate per Working Week the charge is based on a maximum of 39 hours per Working Week unless otherwise stated (Hours worked in excess of that maximum shall be charged pro-rata);

(2) Where the Plant is hired at a rate per day the charge is based on a maximum of eight hours per day (except Friday which shall be seven hours) unless otherwise stated (Hours worked in excess of that maximum 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 calculated by dividing the weekly rate or daily rate by the number of specified hours.

(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 maximum 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 Working Week shall be treated as working time in the case of items

of Plant being 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 to 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 also return 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:-

(i) where the hire is for a fixed period, the expiry of that fixed period;

(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: when 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 liable for the Hire Charges 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);

(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,

then the Owner shall, without prejudice to any other right or remedy, have the right to automatically terminate the Contract without notice and without liability to the Hirer.

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

(i) the Hirer makes any 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 administration or goes into liquidation (otherwise than 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;

(ii) the Hirer ceases or threatens to cease to carry on business;

(iii) the Hirer is unable to pay his debts as they fall due; or

(iv) any diligence, execution or other legal process shall be levied on or against the Plant or against any premises where it is situated;

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 the 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 or 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, 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 the Owner against all loss, damage, costs, or expenses so arising including 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 otherwise 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;

(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 (wheneversoever 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 payable within 30 days of the invoice date. 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

During the Period of Hire the Hirer shall be responsible for complying with statutory provisions or regulations in relation to the operation and use of the Plant.

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 request for information about himself to be deleted, by giving the Owner written notice in accordance with Condition 23(a).

23. Miscellaneous

(a) The Owner shall use all reasonable endeavours to discharge its obligations under these Conditions in a prompt and efficient manner but 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.

(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 under these Conditions shall be in writing and shall be served by personal delivery, fax or by pre-paid first class post addressed to the other party at its registered office, principal place of business or such other address as has 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, if served by fax, at the time of transmission 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) 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.

(h) The Hirer consents to registration of the Contract and any certificate under Condition 23(g) for preservation and execution.

24. Dispute Resolution

(a) The Scheme for Construction Contracts (Scotland) Regulations 1998 as amended 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.