

## **Terms & Conditions:**

### **IRISH CONTRACTORS PLANT ASSOC. GENERAL CONDITIONS FOR THE HIRE OF PLANT WITHOUT OPERATOR (1997 EDITION)**

#### **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, 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 therefore 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 the 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 those 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 and loading 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 the directions of the Hirer.

#### **5. DELIVERY IN GOOD 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 of plant supplied without an operator within 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 bit ascertainable by reasonable examination, in accordance with 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 calculate from date of completed erection of plant. The Hirer shall be responsible for its safe keeping, use in a workman- like manner within the Manufacturer's rated capacity and return on the completion of the hire in equal good order (fair wear and tear excepted)
- (b) The Hirer shall when hiring plant without Owner's operator or driver take all rea-

sonable 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, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom.

(c) The current inspection and Test 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. TIMBER MATS OR EQUIVALENTS**

If the ground is soft or unsuitable for the plant to work on or travel 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 or work on.

## **8. LIABILITY FOR LOSS AND DAMAGE**

(a) When a driver or operator is supplied by the Owner with the plant such driver or operator shall be competent in operating the plant and the Hirer shall not allow any other person to operate such plant without the Owner's consent in writing.

(b) The Owner shall be liable to and hereby indemnifies the Hirer in respect of all loss and/or damage to property, including the plant and in respect of all claims for loss or injury whether to persons or property arising from the negligence of the Owner or that of its servants or agents. The Owner shall have no further or other liability to the Hirer save as may be expressly set out elsewhere in this Agreement.

(c) The Hirer shall be liable to and hereby indemnifies the Owner in respect of all loss and/or damage to property including the plant and in respect of all claims for loss or injury whether to persons or property arising from its negligence or that of its servants or agents. The Hirer shall have no further or other liability to the Owner save as may be expressly set out elsewhere in the Agreement

(d) The Owner and the Hirer shall each ensure that adequate insurance cover is arranged by each of them in respect of their obligations to each other under this Agreement and in respect of their obligations to third parties whether by statute, common law or otherwise. Such insurance cover shall include where appropriate but shall not necessarily be restricted to Public Liability, Employer's Liability and such property insurance as may be relevant. Proof of the existence of such cover shall be available to the other party upon request.

(e) Notwithstanding the above the Owner shall accept liability for damage, loss or injury due to 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 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 Owner.

## **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 breakdown will only be considered from the time and date of notification.

(b) Full allowance for hire charges will be made to the Hirer for any stoppage due to breakdown of plant caused by the development of either an inherent 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, except for punctures, repair the plant without the written authority of the Owner. Punctures are however the responsibility of the Hirer. Allowance of hire charges and for the reasonable cost of repairs will be made by the Owner to the Hirer where repairs have been authorised.

(d) The Hirer shall be responsible for all expense 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.

## **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. 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 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 hired together as a unit, such item shall be deemed a unit for the purpose of breakdown.

## **12. CONSEQUENTIAL LOSSES**

Save in respect of the Owner's liability if any under Clauses 5, 8 and 9, the Owner accepts no liability nor responsibility for any consequential loss or damage due to arising through any cause beyond his control.

### **13. 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 the Owner's consent in writing.

### **14. RE-HIRING ETC.**

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

### **15. 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.

### **16. 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 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 charges 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 transport.

### **17. 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 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, subject however to the provisions of Clause 8 of this Agreement.

(c) Breakdown time shall be allowed for not exceeding 8 hours each day on Monday to Friday less the actual daily work hours worked.

(d) Plant shall be hired out at "per day" or "per week" or "per hour" for a minimum period, odd days at the beginning and at the end of the hire period shall be charged pro rata.

(e) Stoppages due to charging of tyres and repairs to punctures will be chargeable as working time to a maximum of 2 hours for any one stoppage and any excess will be treated as breakdown time.

(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 charge for the period required for assembling on site and dismantling upon completion of hire, such modification of the hire charge and the period for which it shall apply shall be stated on the Hire Contract.

#### **18. 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.

#### **19. 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 or one twentieth of the agreed monthly rate will be made for each full working day broken down calculated to the nearest half working day. No allowance will be made for breakdowns on Saturdays or Sundays.

#### **20. PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 39 HOURS PER WEEK OR A DAY OF 7 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 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 week of 39 hours shall be reduced by 8 hours Monday to Thursday or 7 hours on Friday for each day's statutory holiday occurring in such week, provided that the plant does not work on the holiday.

#### **21. "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 25.

#### **22. 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, but an allowance shall be made of not more than one day's hire charge each way for, travelling time. 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 charge 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 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 transport has been given by the Owner under Clause 15, 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 Clause 15 for a period of at least 14 days.

### **23. NOTICE OF TERMINATION OF CONTRACT**

Either party shall have the right to determine the Contract at will by notice in writing or by telephone call communicated by either party to the other (except in cases where the plant has been lost or damaged). Notice given by the Hirer or the Owner's driver or operator shall not be deemed to constitute compliance with the provisions of this Clause.

### **24. IDLE TIME**

When the 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 for the Operator.

### **25. 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 national 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.

### **26. TRAVELLING TIME AND FARES**

Travelling time and fares for operators, similar expenses incurred at the beginning and end of the hire period and where appropriate the operators return fare to his home at periods 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 for the purpose of servicing, repair or maintenance of plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the plant.

### **27. 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.

### **28. SHARPENING OF DRILLS/STEELS, ETC.**

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

### **29. OWNER'S NAME PLATES**

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

### **30. TRANSPORT**

The Hirer shall pay the cost 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.

### **31. GOVERNMENT REGULATIONS**

Subject to the provisions of Clause 5(c) the Hirer will be responsible for compliance with regulations issued by the Government or Local Authorities, including regulations under the Factories Acts, Health and Safety at Work etc. Act and observance of the Road Traffic Acts should then apply, including the cost of Road Fund Licences and any insurances made necessary thereby, save that if and during such time as the plant is travel- ling, whether for full or part journey from owner to site and site Owner under its own power with a driver supplied by the Owner, the Owner and not Hirer shall be responsible as aforesaid.

### **32. PROTECTION OF OWNERS 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 14 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 Government requisition.

(b) 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 conditions of this Contract, or if the Hirer shall suffer any distress or execution to be levied against him or make or propose to make any arrangement with his creditors or being a Company, shall go into liquidation (other than a member's voluntary liquidation) or if a Receiver is appointed or Manager or Examiner of the Hirer's business or undertaking is appointed or possession taken by or on behalf of the holders of any debenture secured by a floating charge, or any property comprised in or subject to the floating charge or the Hirer shall do or shall cause to be done or permit or suffer any act or thing where- by 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 affect the right of the Owner to recover from the Hirer any monies due to the Owner under the Contract or damages for breach thereof.

### **33. 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 to a 5-day week being worked by the Hirer (either of 39 hours or of such number of hours as may constitute the normal working week in the said industry) Clauses 1(d) and (f), 17 (c) and (d) 19 and (in regard to break- down allowance and reduction for statutory holidays) 20 shall be deemed to be modified conformally 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.

### **34. ENFORCED TRANSFERENCE OF CONTRACT**

In the event of any item or items of the plant comprised in the hire Contract being used by the Hirer on or in connection with a contract for the construction of works or build- ings and of a forfeiture of such contract being made by the Employer thereunder, the Owner will upon request in writing made by the Employer thereunder, within seven days after the date when such forfeiture has become effective and on such Employer under- taking 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 32 hereof such Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of completing the works or buildings comprised in such contract.

### **35. ARBITRATION**

If during the continuance of the Contract or at any time thereafter any dispute, difference or question shall arise between the Owner and the Hirer arising out of or in connection with the contract, such dispute, difference or question shall be referred pur- suant to the Arbitration Act 1954 and 1980 or any statutory re-enactment thereof for the time being in force, to a Sole Arbitrator to be agreed upon by the Owner and the Hirer. If the parties fail to appoint an arbitrator within one calendar month of either party serv- ing on the other party a written notice to concur in the appointment of an arbitrator the dispute shall be referred to a person to be appointed on the application of either party by the President for the time being of the Institution of Engineers of Ireland. If an arbitrator declines the appointment or after appointment is removed by order of a compe- tent 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 President for the time being of the Institution of Engineers of Ireland to appoint anothe- r arbitrator to fill the vacancy. In any case where the President for the time being of the Institution of Engineers of Ireland is not able to exercise the functions conferred on him by this Clause the said functions may be exercised on his behalf by a Vice-President for the time being of the said Institution.