

**GGR GROUP**  
**TERMS AND CONDITIONS FOR THE HIRING OF PLANT**  
**(WITH EFFECT FROM NOVEMBER 2011)**

**1. DEFINITIONS**

- (a) The "Contract" is the Contract between the Owner and the Hirer for the hire of Plant, which incorporates the Offer and is governed by these conditions.
- (b) The "Hire Period" shall commence from the time when the Plant arrives on the Hirers site or other agreed location and shall continue until the Plant is received back at the Owner's named depot or other agreed location. For the avoidance of doubt the Hire Period includes the time Plant is left on site during the Holiday Period.
- (c) 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.
- (d) "Holiday Period" covers any cessation of work over Easter, Christmas and the New Year, as well as any other Bank or Public holidays;
- (e) "Offer" is the Owner's offer to hire the Plant to the Hirer which will include details of the Plant to be hired, the Hire Period, relevant hire rates and charges and any supplementary conditions to be incorporated into the Contract.
- (f) The 'Owner' is GGR Group Limited who are hiring the Plant and includes their successors, assigns or personal representatives.
- (g) 'Plant' covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment and accessories therefore which the Owner agrees to hire to the Hirer, or anything which is supplied by the Owner to affect the hire, or anything supplied by the Owner for the safe operation and routine inspection and maintenance of the Plant.
- (h) "Operator" means the driver of such Plant that is self-powered and the operator of either such Plant when stationary or of such Plant that is not self-powered
- (i) A "Day" shall be 10 hours unless otherwise specified in the Contract.
- (j) A "Week" shall be 7 (seven) consecutive days
- (k) A Working Week" shall be from 08:30 on Monday until 17:30 on Friday.

**2. EXTENT OF CONTRACT**

No terms, conditions or warranties other than specifically set forth in the Offer shall be deemed to be incorporated or to form part of the Contract or shall otherwise govern the relationship between the Owner and the Hirer in relation to the hire of any particular Plant pursuant to the Offer. This excludes all other terms and conditions which the Hirer may seek to apply under any form of order or acknowledgement or acceptance or similar document and supercedes all prior negotiations, representations or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by the Owner. The Owner and the Hirer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract, except that a person is an accessor to or an assignee of rights of the Owner is deemed to become a party to the Contract after the date of succession or assignment (as the case may be). 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 may be)

**3. ACCEPTANCE OF PLANT**

Acceptance of Plant on site implies acceptance of all terms and conditions herein unless otherwise agreed in writing. Where the Contract specifies a particular type of plant, the Owner reserves the right to supply a suitable alternative to that specified. Acceptance of the alternative plant on site shall demonstrate acceptance of such alternative plant

**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 the purpose of loading/unloading 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 Clause 15) who shall be solely responsible for all claims arising in connection with unloading/loading of the Plant by, or with the assistance of, such personnel.

**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 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 the Plant requires to be erected on site, the periods stated above shall be calculated from the date of completed erection of Plant.. The Hirer shall be responsible for its safe keeping, use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturers and/or Owner's recommendations, and its return on the completion of hire in equal good order (fair wear and tear excepted).
- (b) The Hirer shall at all times when hiring Plant without the 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 or unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom.
- (c) Any 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 the Hire Period.

**6. PLANT OPERATIONS**

- (a) In order to comply with legislation including the requirements of the Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998 No. 2307) and BS 7121 the Hirer is responsible for planning, supervising and controlling the lifting operations, including the preparation and distribution of risk assessments and method statements and for the safe slinging of the goods to be lifted or handled.
- (b) If advice or information is sought from and given by any person supplied by 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 obligation to make his own independent assessment as outlined above.
- (c) Insofar as the Hirer's use of the crane will require any license, permission or authorisation from any private or public body, or government or Local Authority or the giving of notice to any such body, Government or Local Authority then the obtaining of any such licence, permission or authorisation, or the giving of any such notice, shall be the entire responsibility of the Hirer.
- (d) The Hirer shall ensure that the site is clear of all obstructions and that traffic management arrangements are set up and operated correctly.

Issue No:	5
Issue Date:	Nov 11
No of Pages:	Page 1 of 6
Document Ref:	TCHP 01

**7. INSURANCE**

- (a) The Hirer shall take out and maintain insurance for employer’s and third party liability and against any and all loss, expense or liabilities the Hirer might incur as a result of the operation of the Plant the same is commercially available. The Owner reserves the right to require confirmation that the Hirer is complying with its insurance obligations.
- (b) Without prejudice to the Hirer’s insurance obligations, the Owner and the Hirer may agree that the Owner shall insure against certain specified liabilities or losses of the Hirer in which case the Owner shall be entitled to charge the Hirer. Such insurance shall be subject to exclusions and excesses

**8. 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 is reasonably possible, the Hirer shall allow such access during the Working Day.

**9. GROUND AND SITE CONDITIONS**

- (a) The Hirer is deemed to have knowledge of the site or property or land where the Plant is to be delivered and the Hirer warrants that the condition of the site or place of delivery of the Plant is suitable for the use of such Plant.
- (b) If, in the opinion of the Hirer, the ground (including any private access or track) is soft or unsuitable for the Plant to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Hirer shall supply and lay suitable timbers or equivalent support in a suitable position for the Plant to travel over, work on, be transported over, be erected or dismantled on including for the purpose of delivery and collection.
- (c) Any timber or other material supplied by the Owner is provided solely to assist the Hirer under their duties within clause 9(b) and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the Plant.
- (d) the Hirer shall be responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels, roadways on or adjacent to the site and the Hirer shall liaise as necessary and comply with all the requirements of the relevant statutory authority or similar body.

**10. HANDLING OF PLANT**

- (a) 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 control and direction of the Hirer. Such operators shall for all purposes in connection with their employment in the working of the Plant be regarded as servants or agents of the Hirer (but without prejudice to any of the provisions of clause 15) who alone shall be responsible for all claims arising in connection with the operation of the Plant by the said drivers/operators/persons.
- (b) The Hirer shall not allow any other person to operate such Plant without the Owner’s previous consent to be confirmed in writing.
- (c) Such drivers or operators or persons shall not operate any other plant nor machinery or undertake work other than that for which they are supplied by the Owner unless previously agreed in writing between the Owner and the Hirer.

**11. BREAKDOWNS, REPAIRS AND ADJUSTMENT**

- (a) Any breakdown or unsatisfactory working of or damage to any part of the Plant must be notified immediately to the Owner, and confirmed in writing. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by the Owner.
- (b) Full allowance for the hire charges set out in the Offer 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 Contract.
- (c) The Hirer shall not (except for the changing of any tyre and repairs of punctures) repair, modify or alter 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/repared. The Hirer is responsible for all costs incurred in the changing or replacement of any tyre (which must be of equivalent specification) as approved by the Owner and for the repair of any puncture.
- (d) The Hirer shall be responsible for all expense invoiced arising from any breakdown, unsatisfactory working of or damage to any part of the Plant 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 idle time rate as defined in clause 26, during the period the Plant is necessarily idle due to breakdown, unsatisfactory working or damage. The Hirer is responsible for the cost of spares and/or repairs due to theft, loss or vandalism of the Plant The Owner will be responsible for the cost of repairs, inclusive of the cost of spares, to the Plant involved in breakdown from all other causes..

**12. OTHER STOPPAGES**

No claims will be admitted (other than those allowed for under “Breakdown” (clause 11) or for “Idle Time” (clause 26), as herein provided), for stoppages through causes outside the Owner’s control, including but not limited to bad weather and/or ground conditions nor shall the Owner be responsible for the cost or expense of recovering Plant from soft or unsuitable, or a hazardous environment. For the avoidance of doubt, the Hirer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment ground.

**13. LOSS 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 items shall be deemed a unit for the purpose of breakdown.

**14. LIMITATION OF LIABILITY**

Except for liability on the part of the Owner which is expressly provided for in the Contract (including these Clauses):

- (a) The Owner shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond his reasonable control;
- (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 other 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 other financial or economic loss or damage of whatever nature; and
- (c) Whenever the Contract (including these Clauses) provides that any allowance is to be made against hire charges, 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 charges which would otherwise be or become due if the allowance in question had not been made.
- (d) For the avoidance of doubt, nothing in these conditions limits or seeks to exclude the Owners liability for claims of death or personal injury caused by the Owner’s negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

Issue No:	5
Issue Date:	Nov 11
No of Pages:	Page 2 of 6
Document Ref:	TCHP 01

**15. HIRER’S RESPONSIBILITY FOR LOSS AND DAMAGE**

- (a) For the avoidance of doubt it is hereby declared and agreed that nothing in this Clause affects the operation of clauses 4,5,10 and 11of this Agreement.
- (b) For the duration of the Hire Period (which for the avoidance of doubt includes the time Plant is left on site during a Holiday 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 from whatever cause the same may arise, fair wear and tear excepted, and except as provided in Clause 11 herein, and shall also fully and completely indemnify the Owner and any personnel supplied by 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 storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period, and in connection therewith, whether arising under statute or common law. In the event of loss or damage to the Plant, hire charges shall be continued until settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of agreement.
- (c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury:
  - (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 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 site and is in transit on a highway maintainable at public expense to the Owner by transport of the Owner or as otherwise arranged by the Owner.
  - (iv) where the Plant is travelling to or from a site on under its own power with a driver supplied by the Owner.

**16. 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 no later than 24 hours after such telephone notification. 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.

**17. RE-HIRING, ETC.**

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

**18. CHANGE OF SITE**

The Plant shall not be moved from the site to which it was delivered or consigned without informing the Owner as to its new location.

**19. 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 Clauses 11 and/or 15) paying all transport charges involved. In the event of the Owner being unable to replace the Plant he shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of Clauses 11 and/or 15) by giving written notice to the Hirer. If such termination occurs:

- (a) within three months from the commencement of the Hire Period the Owner, (but without prejudice to any of the provisions of Clauses 11 and/or 15) shall pay all transport charges involved, or,
- (b) more than three months from the commencement of the Hire Period the Owner, (but without prejudice to any of the provisions of Clauses 11 and/or 15) shall be liable only for the cost of reloading and return transport.

**20. BASIS OF CHARGING**

- (a) Plant without an operator provided by the Owner shall be hired out ‘per week’ for the period specified in the Offer.
- (b) Plant with an operator provided by the Owner shall be hired out per ‘working week’ or such other period as may be mutually agreed between the Owner and the Hirer.
- (c) Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of Operator supplied by the Owner except where breakdown is due to Hirer’s misuse, misdirection or negligence, subject however to the provisions of Clause 10 of this Agreement.
- (d) Where an operator is not provided by the Owner breakdown time shall be allowed for not exceeding 10 hours each day on Monday to Sunday less the actual daily hours worked.
- (e) Where an operator is provided by the Owner breakdown time shall be allowed for not exceeding 8 hours each day on Monday to Friday less the actual daily hours worked.

**21. PLANT HIRED BY THE WEEK**

If no breakdown occurs, the full hire for the minimum period in the contract will be charged. The stipulated number of hours can be worked at any time during the minimum period of a week after full allowance has been made for battery recharging time. Allowance will be made for breakdowns up to 10 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.

**22. PLANT HIRED BY THE WORKING WEEK**

If no breakdown occurs, the full hire for the minimum period in the contract will be charged. The stipulated number of hours can be worked at any time during the minimum period of a working week subject to agreement between the Owner and the Hirer. An additional daily charge will be made for the operator for work in excess of such minimum period. 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.

**23. “ALL-IN” RATES**

Where “All-In” rates are charged by agreement the minimum period shall be defined in the Contract and in accordance with the hire rates and terms contained therein, subject to the provisions of Clause 27.

**24. COMMENCEMENT AND TERMINATION OF HIRE (TRANSPORT OF PLANT)**

- (a) The hire period shall commence from the day when the Plant arrives at the Hirer’s designated location and shall continue until the Hirer has received an off-hire reference and the plant is subsequently received at the Owners named depot or other designated location.
- (b) It is the responsibility of the Hirer to obtain an off-hire reference from the Owner at the cessation of hire. Off-hire negotiations must be conducted verbally between the Owner and the Hirer. Confirmation of off-hire reference may be provided by the Owner verbally, by mail or electronic transmission.
- (c) If more than one day be properly and unavoidably occupied in transporting the Plant an allowance to the hire rate will be allowed by the Owner. The hire period shall continue in one week periods if the Hirer shall not make the Plant available for collection to the Owner or their contracted representatives on the agreed date. Whether in the event of off-hire or otherwise, until such time as the Plant is returned to, or collected by, the owner, the provisions of Clause 15 shall apply.

Issue No:	5
Issue Date:	Nov 11
No of Pages:	Page 3 of 6
Document Ref:	TCHP 01

**25. HIRER'S LIABILITY DURING THE NOTICE OF TERMINATION OF CONTRACT**

- (a) Where the period of hire is indeterminate or having been defined becomes indeterminate the Contract shall be terminable by seven days' notice in writing given by either party to the other, except in cases where the Plant has been lost or damaged. Notwithstanding that the Owner may have agreed to accept less than 7 (seven) days notice of termination, the Hirer's obligations under Clause 15 shall continue until the Plant is returned to the Owner in accordance with Clause 32 or until the Owner has collected the Plant within the 7 (seven) days following the acceptance of short notice. Oral notice given by the Hirer to the Owner's operator shall not be deemed to constitute compliance with the provisions of this Clause.
- (b) Without prejudice to clause 25(a), should the Hirer fail to make the plant available for collection by the Owner before the end of the 7 day notice, the Hirer's obligation under clause 15 shall continue for a further 3 days or until such time as the Plant is made available for collection and the Owner has collected the Plant. For the avoidance of doubt, where the Hirer gives a notice pursuant to clause 25(a) but subsequently and with the consent of the Owner, withdraws such notice, the obligations of clause 15 shall continue to apply and the requirements of clause 25 will apply to any later termination of the Contract before the Hire Period commences, then
- (c) If the Hirer terminates the Contract before the Hire Period commences then the Hirer is liable for all reasonable costs and charges incurred by the Owner or to which the Owner is committed at the time of termination.

**26. IDLE TIME**

When the Plant is prevented from working for a complete Working Week, the hire charges shall be two-thirds of the hire rate or such other idle time as stated in the Offer. If the Plant works for any time during the guaranteed Hire Period then the whole of that guaranteed minimum Hire Period shall be charged as working time. In any case no period less than one Working Day shall be reckoned as idle time save for as provided for in Clause 20(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.

**27. WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT**

All chargeable items shall be paid by the Hirer at the rates set out in the Contract 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 Owners statutory contributions shall be charged as additions at cost by the Owner and shall be admitted and paid by the Hirer.

**28. TRAVELLING TIME AND FARES**

Travelling time, fares and similar expenses for driver's, operator's and any persons supplied by the Owner incurred at the beginning and end of the Hire Period and where appropriate the return fare for the driver, operator or 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 expense 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.

**29. FUEL, OIL AND GREASE**

Where plant is reliant on internal combustion for motive power, it shall be supplied by the Owner to the Hirer with full quantities of the appropriate fuel. Subsequent consumable supply is the responsibility of the Hirer. 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 all damages losses, costs and expenses incurred by the Owner if the Hirer uses the wrong fuel, oil or grease.

**30. 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 without the prior written permission of the Owner.

**31. STATUTORY MARKINGS**

The Hirer shall not remove, replace, deface, cover up nor by any other method render unrecognizable any marking that is affixed to the Plant to accord with relevant statutory legislation including, but not limited to, The Supply of Machinery (Safety) Regulations 2008, as amended, and the Lifting Operations and Lifting Equipment Regulations 1998 or any amendments or re-enactments thereof for the time being in force.

**32. 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 Owner's depot or other agreed location on completion of the Hire Period.

**33. GOVERNMENT REGULATIONS**

- (a) The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities including regulations under the Environment Acts, Factories Acts, Health and Safety at Work, Etc. Act and observance of the Road Traffic Acts should they 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 travelling, whether for full or part journey from the Owner to site and site to Owner under its own power with a driver supplied by the Owner, the Owner and not the Hirer shall be responsible as aforesaid.
- (b) The Hirer shall indemnify the Owner against any charges or fines that the Owner may become liable for as a result of the operation of the Plant during the Hire Period.

**34. TERMS OF BUSINESS**

- (a) Unless otherwise expressly stated, orders are accepted on condition that each consignment will be invoiced separately and payment therefore shall become due 30 days from the end of the month in which the goods are dispatched.
- (b) Should default be made by the Hirer in paying any sum due under any Contract as and when it becomes due, or should the Hirer be in breach in any respect of the Contract entered into, the Owner shall have the right by written notice posted to the Hirer either forthwith to suspend any all further deliveries until the default be made good or to determine any Contract then subsisting so far as any further goods remain to be delivered without prejudice to any claim or right the Owner might make or exercise

Issue No:	5
Issue Date:	Nov 11
No of Pages:	Page 4 of 6
Document Ref:	TCHP 01

**35. 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 17 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) The Owner may terminate the Contract forthwith by written notice to the Hirer if one or more of the following events occur:
  - (i) If the Hirer defaults in punctual payment of any sums due to the Owner for Hire of Plant or other charges payable pursuant to these conditions;
  - (ii) The Hirer fails to observe and perform the terms and conditions of this Contract;
  - (iii) If the Hirer suffers, or the Owner reasonably believes the the Hirer shall suffer, any distress or execution to be levied against him;
  - (iv) Makes or proposes to make any arrangement with his creditors, or becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force, or;
  - (v) The Hirer does or causes 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;
- (c) In the event of termination under sub-paragraph (b) above:
  - (i) The Hirer must give the Owner or his agents, immediate, unobstructed access to recover the Plant.
  - (ii) The Owner shall be entitled to claim the hire charges outstanding as at the date of termination of the hire under this clause and return transport charges under clause 32.
- (d) The rights under sub-paragraph (b) and (c) above:
  - (i) May be exercised notwithstanding that the Owner may have waived some previous default or matter of the same or like nature.
  - (ii) Shall not affect the Owner's right to claim damages for breach of Contract or recover any sums due under the Contract as a debt.
- (e) If the Hirer does not make payment of a sum by the final date on which payment is due to be made, the Owner has the right to suspend performance of its obligations under the Contract. The right to suspend may not be exercised without first giving to the Hirer at least 7 days notice in writing of the Owner's intention to suspend performance, stating ground or grounds on which the Owner intends to suspend performance. The right to suspend performance will cease when the Hirer makes payment in full of the amount due.

**36. CHANGES IN NORMAL WORKING WEEK**

The foregoing provisions have been framed upon the basis of the Hirer working:

- (a) where an operator is provided by the Owner, a 5-day week of 40 hours;
- (b) where an operator is not provided by the Owner, a 7-day week of 84 hours.

It is hereby agreed that in the event of:

- (a) there being any change in the normal weekly hours of 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 40 hours or of such number of hours as may constitute the normal working week in the said industry).

Clauses 1(j) and (k), 20(a) and (b), 21 and (in regard to breakdown allowance) 22 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 period shall be varied pro rata.

**37. TRANSFERENCE OF CONTRACT**

In the event of any item or items of 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 shall request the return of said Plant, unless within the hire period the Hirer may gainfully employ said item or items under another contract. The Employer may not ask for nor be granted enforced transference of contract.

**38. MODEL LIFT PLANS AND RISK ASSESSMENTS**

If and to the extent that the Owner provides to the Hirer specimen forms of Lift Plan and/or risk assessment:

- (a) The Hirer acknowledges that such specimen forms are provided only by way of generic guidance as to matters generally suitable for inclusion in such documents and without responsibility of the Owner for their appropriateness or suitability for any specific site or operation;
- (b) The Hirer is and remains solely responsible for ensuring the appropriateness of such documents for any specific site or operation and for their adaptation and completion accordingly

**39. TRAINING**

If and to the extent that the Owner provides to the Hirer training of the Hirer's personnel in the operation of the Plant:

- (a) the Owner will exercise reasonable skill and care in the delivery of such training but shall have no greater or other liability in respect thereof;
- (b) the Owner does not warrant or represent that such training or any qualification resulting therefrom will be recognised or accepted for any particular purpose and
- (c) it is and remains the responsibility of the Hirer to ensure that its personnel are competent to undertake the operations and/or supervision required of them

**40. LIFT PLANS**

If and to the extent that the Owner provides to the Hirer a completed Lift Plan relating to the operation of the Plant then:

- (a) the Owner will exercise reasonable skill and care in the compiling of such Plan but shall have no greater or other liability in respect thereof;
- (b) the Hirer is responsible for providing to the Owner all relevant data concerning site conditions and warrants to the Owner the accuracy of such data
- (c) the Hirer shall not use or rely upon any such Plan under site conditions different from those on the basis of which the Plan has been prepared and
- (d) copyright and all other intellectual property rights in such Plan remain vested in the Owner and the Hirer may not without the prior written consent of the Owner copy or use such plan for any other purpose than the particular hire and use of the Owners Plant for which it was prepared and
- (e) the Owner does not warrant or represent that any such Plan will be acceptable to any particular person, body or authority and it is and remains the responsibility of the Hirer to obtain all necessary approvals of any such Plan and
- (f) where a transfer of duty in a Lift Plan is required by the Owner and not actioned by the Hirer, the Owner reserves the right to delay delivery of the Plant to the Hirer until the necessary document is completed and returned to the Owner.

**41. DISPUTE RESOLUTION**

- (a) If the site is situated in the United Kingdom, then the court whose jurisdiction covers the site will have exclusive jurisdiction and law for this Contract. If the original site is not situated within the United Kingdom, then the relevant jurisdiction and interpretation of the law of the Contract will be governed by the country where the Owner's head office is located.
- (b) Both parties to the Contract have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulation 1998 (or any amendment or re-enactment thereof for the time being in force) will apply. The person (if any) specified in the Contract to act as adjudicator may be named in the Offer. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being.

Issue No:	5
Issue Date:	Nov 11
No of Pages:	Page 5 of 6
Document Ref:	TCHP 01

- (c) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator, and shall submit to summary judgement and enforcement (and/or under Scots law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement or deduction. Where, under Scots law, the Owner, the Hirer or the 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.

**42. LATE PAYMENTS**

The Owner reserves the right to charge the Hirer for the late payment of any outstanding invoices under the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent legislation.

**43. SEVERABILITY**

If any of these clauses are held to be unlawful void or unenforceable, then that clause will be deemed to be severable and will not affect the validity and enforceability of the remaining clauses, to the extent permitted by law.

Issue No:	5
Issue Date:	Nov 11
No of Pages:	Page 6 of 6
Document Ref:	TCHP 01