

Hire Order Conditions – BMW Joint Venture

1. IN THESE CONDITIONS OF PURCHASE ORDER THE FOLLOWING DEFINITIONS SHALL APPLY

- 1.1 The "Owner" is the Company, firm or person letting the Plant on hire and includes their successors, assigns or personal representatives.
- 1.2 The "Hirer" means BMW Joint Venture (comprising of Balfour Beatty, Morgan Sindall and Vinci Construction UK (each of the JV Parties is jointly and severally liable));
- 1.3 "Plant" covers all classes of Plant, machinery, vehicles, equipment and accessories, which the Owner agrees to hire to the Hirer.
- 1.4 A "day" shall be 10 hours unless specified otherwise in the Contract
- 1.5 A "working week" covers the period from starting time on Monday to finishing time on Friday
- 1.6 The "hire period" shall commence from the time when the Plant arrives on site and shall continue until the Plant is off hired."
- 1.7 A "week" shall be 7 consecutive days.
- 1.8 "the Contract" means the Hirer's enquiry, its Hire Order and any supplement there to and the Owner's acknowledgement thereof (if any) but excluding any terms or conditions of contract in which the Owner's acknowledgement is made;
- 1.9 "the Hire Order" shall mean the document issued by the Hirer to the Owner defining the Plant, goods and/or services to be provided together with any requirements, documents listed or referred to, and these conditions
- 1.10 "Conditions" means the terms and conditions of Hire set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Hirer and The Owner.
- 1.11 "Delivery Address" means the address stated on the Order.

2. EXTENT OF CONTRACT

- 2.1 These conditions shall form the basis of the Contract and unless accepted by the Hirer in writing shall constitute as the entire agreement relating to the hire of the Plant and supersedes all prior negotiations, documents, agreements, statements, Owners quotations and understanding made between the Owner and the Hirer.
- 2.2 Where such terms or conditions are included in the Contract but conflict with the Hirers Conditions then the latter shall take precedence.
- 2.3 No person is authorised by the Hirer to amend this Hire Order or the Contract in any respect (except authorised site personnel in matters concerning delivery times) other than by issue of written instructions on a further Hire Order.
- 2.4 No claim for payment shall be valid unless supported by an official Hire Order and/or Hire Order reference number and related timed delivery note signed by the authorised signatory of the Hirer (referred to on the Hire Order).
- 2.5 Plant shall only be supplied by the Hirer on receipt of an authorised signed Hire Order and Hire Order reference number issued by the Hirer.
- 2.6 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall (to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness) be deemed to be severable and the remaining provisions of the Contract shall continue in full force and effect.
- 2.7 A reference to a particular law is a reference to it as in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 2.8 Where the Plant is supplied to a Delivery Address in England or Wales, the Contract shall be governed by the laws of England and Wales and the Owner agrees to submit to the non-exclusive jurisdiction of the English courts. Where the Plant is supplied to a Delivery Address in Scotland, the Contract shall be governed by the laws of Scotland and the Owner agrees to submit to the non-exclusive jurisdiction of the Scottish courts.
- 2.9 Competition law develops and evolves over time but most important sources of law at present are the Competition Act 1988, which prohibits anti-competitive agreements and the abuse of a dominant position, and the Enterprise Act 2002, which introduced criminal sanctions for cartels. The Owner shall at all times observe, perform and comply with all statutory and other obligations of all current Acts and shall indemnify and keep indemnified the Hirer from and against all of the breach or non-compliance of any such obligations.

3. ACCEPTANCE OF PLANT

- 3.1 Delivery and acceptance of the Plant on site implies acceptance of all terms and conditions herein.

4. UNLOADING AND LOADING

- 4.1 The Owner 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 all directions of the Hirer.
- 4.2 All deliveries to site, and Plant loaded at site must comply with the requirements of the Department of Transport (DfT) UK. The Owner shall ensure that all drivers/operators delivering or picking up Plant to / from site carry all statutory documentation certifying their authority to undertake the duties necessary to fulfil the hire order requirements and that all site notices and regulations are observed when making such deliveries.
- 4.3 Where Plant is loaded or off-loaded, risk assessments and loading/unloading plans must have been undertaken prior to delivery and copies provided to the Hirer. Hiab driver/operators will be required to carry the testing & thorough examination certificate for the Hiab and any associated lifting accessories. Before the Owner is allowed onto the site and allowed to operate Plant and associated equipment for loading and unloading the Owners delivery drivers must be in possession of proof of competence in the form of CPCS, (Construction Plant Competence Scheme), ALLMI (Association of Lorry Loader Manufacturers and Importers) or other equivalent certification acceptable to the Hirer. If in doubt the Owner should check with the Hirer prior to delivering the goods.
- 4.4 Delivery Drivers must report to the main site office on arrival at the site to receive clear instructions on the location for the safe off-loading/loading of the Plant under the appropriate supervision.
- 4.5 The Owners delivery drivers must be made aware that they have full responsibility for the safety of the load until fully off-loaded or loaded (if the vehicle is collecting goods) and the vehicle has left the confines of the Project.
- 4.6 The Owners delivery drivers must wear appropriate PPE [Personnel Protective Equipment] work-wear at all times as a minimum Hi Viz Vests, safety boots, Hard Hat, Light Eye Protection and Gloves. The Owner should note that the Hirer operates a no shorts policy.
- 4.7 The Owners delivery drivers must be in possession of proof of competence in the form of CPCS [Construction Plant Competence Scheme], ALLMI [Association of Lorry Loader Manufacturers and Importers] or other equivalent certification acceptable to The Hirer to be allowed onto The Hirers sites and be allowed to operate items of Plant and equipment associated with loading and unloading of Goods.

5. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

- 5.1 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 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 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 return on the completion of the hire in equal good order (fair wear and tear excepted).
- 5.2 Plant shall be presented for inspection to the Hirers Project Manager or his authorised representative on delivery to site and before being put to work. The Plant must also be presented for inspection before being removed from site and the return note should be signed by the Project Manager or his authorised representative.
- 5.3 The Owner will provide up-to-date maintenance records and Planned Preventative Maintenance (PPM) schedules, testing and thorough examination certificates as required by the 'Lifting Operations and Lifting Equipment Regulations', the 'Provision and Use of Work Equipment Regulations' and as recommended within the following publications;
 - (i) CPA publication 'Maintenance, Inspection and Thorough Examination of Tower Cranes' dated May 2008 or subsequent revisions thereafter;
 - (ii) British Standards;
 - (iii) CIRIA (Construction Industry Research and Information Association) guidance.
- 5.4 The Owner is responsible for providing Plant that is free from oil leakage. In the case of oil spillage the Hirer will have the right to offset the charges for the clean-up of any spillage back to the Owner having given due notice of any such action.

6. SERVICING AND INSPECTION

- 6.1 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.
- 6.2 The Owner's maintenance staff must make their presence on site known to the Project Manager or his authorised representative before carrying out servicing or maintenance work or repair to breakdowns.
- 6.3 This order is placed on condition that the Owner will comply with the requirements of Health & Safety at Work Act 1974, the relevant Statutory Provisions as defined in Section 53(1) of the Act and any ensuing regulations made under the Act, in particular the Provision and Use of Work Equipment regulations 1992 and the Supply of Machinery (Safety) Regulations 1992. Amongst other things, in general these require the Owner to:
 - i) provide Plant which is of sound construction and properly maintained in an efficient state, efficient working order and good repair;
 - ii) ensure that every dangerous part of machinery is securely guarded;
 - iii) where the Owner provides a Plant operator or driver, ensure that he or she is trained and competent to operate the item of Plant on which he or she is employed;
 - iv) provide the Hirer with sight of and, where appropriate, copies of any relevant certificates of test, thorough examination, inspection, maintenance records, etc. Advice on this matter may be obtained from the Health and Safety Department.
- 6.4 The Owners personnel associated with the use of hazardous substances must be provided with all necessary personal protective equipment as specified on the COSHH Assessment, and they must be instructed by the Owner on the relevant COSHH Assessment, hazards and controls. It is the Owner's responsibility to remove and dispose from site of all hazardous substances that fall under the Control of Substances Hazardous to Health Regulations (COSHH Regulations). The Owner should note that records of disposal may be requested by the Hirer as evidence of compliance.
- 6.5 The Owner shall indemnify the Hirer against all claims, cost or expenses incurred by the Hirer due to the Owner's failure to comply with clause 6.

7. TIMBER MATS OR EQUIVALENT

- 7.1 If the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel, or be transported over without timbers or equivalents the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the Plant to travel over, work on, or be transported over, including for the purpose of delivery and collection.

8. HANDLING OF PLANT

- 8.1 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 and such person shall be under the direction and control of the Hirer. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of Clause 13) who also shall be responsible for all claims arising in connection with the operation of the Plant by the said drivers/operators/persons. The Hirer shall not allow any other person to operate such Plant without the Owner's previous consent to be confirmed in writing.

9. BREAKDOWN, REPAIRS AND ADJUSTMENT

- 9.1 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 time will only be considered from the time and date of notification.
- 9.2 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 ascertained by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of this Contract.
- 9.3 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 for the hire charges and for the reasonable cost of repairs will be made by the Owner to the Hirer where repairs have been authorised."
- 9.4 The Hirer shall be responsible for all reasonable expenses involved or 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 that 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.
- 9.5 The Hirer will only accept costs for damaged tyres by negotiation having regard to the wear and condition of the replaced / repaired tyres.

10. OTHER STOPPAGES

- 10.1 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 OTHER PLANT DUE TO BREAKDOWN

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

12. CONSEQUENTIAL LOSSES

- 12.1 Save in respect of the Owner's liability if any under Clauses 5, 8, 9 and 13(b) the Owner excepts no liability nor responsibility for any consequential loss or damage due to or arising through any cause beyond his control.

13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

- 13.1 For the avoidance of doubt it is hereby declared and agreed that nothing in this Clause affects the operation of Clauses 4, 5, 8 and 9 of this Agreement.
- 13.2 During the continuance of the hire period the Hirer shall subject to the provisions referred to in sub paragraph make good to the Owner all loss or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted. In the event of loss or damage to the Plant, hire charges shall be continued at idle time rates until settlement has been effected.
- 13.3 Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury due to or occurring:
 - (i) prior to delivery of any Plant to the site by the Hirer where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner.

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- (ii) during the erection and / or dismantling of any Plant, where such Plant requires to be completely erected / dismantled on the site always provided that such erection is under the exclusive control of the Owner or his agent.
- (iii) after the Plant has been removed from the site and is in transit onto the Owner by transport of the Owner or as otherwise arranged by the Owner.
- (iv) where Plant is travelling to or from a site under its own power with a driver supplied by the Owner.
- 13.4 No responsibility will be accepted by the Hirer for the loss of or damage to the Plant unless there is adequate provision on the Plant for securing it against theft, vandalism or other tampering by third parties. Where Plant is lost or damaged, the decision to replace or repair the Plant belonging to the Owner rests with the Owner and the hire shall be deemed to have ceased from the time the loss or damage is notified to the Owner. Claims for loss or damage will be negotiated having regard to the age and condition of the Plant damaged or lost and advised at appropriate fair & reasonable rates.
- 13.5 Any damage signed for by the Hirer will be seen as an admission of liability of such damage and not an acceptance of cost for the repair of such damage.
- 14. NOTICE OF ACCIDENTS**
- 14.1 If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Owner by telephone and confirmed in writing to the Owner's office. In relation to any claim in respect of which the Hirer is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's consent in writing.
- 15. RE-HIRING ETC.**
- 15.1 The Plant or any part thereof shall not be re-hired, sub-let, to any third party without the written permission of the Owner. The Hirer reserves the right to make hired Plant available to other Contractors / Subcontractors working on behalf on the Hire where the equipment is hired, and the Owner is deemed to be agreeable to this.
- 16. CHANGE OF SITE**
- 16.1 The Plant shall not be moved from the site to which it was delivered or consigned without the written permission of the Owner.
- 17. RETURN OF PLANT FOR REPAIRS**
- 17.1 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 shall pay all transport charges involved. In the event of the Owner being unable to replace the Plant he shall be entitled to determine the Contract forthwith by giving written notice to the Hirer. If such determination occurs the Owner shall pay for all transport charges involved.
- 18. BASIS OF CHARGING**
- 18.1 The Hirer shall render to the Owner for each 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 Hirers Project Manager or his authorised representative shall sign the employee's Time Record Sheets. The signature of the Project Manager or his authorised representative shall bind the Hirer to accept the hours shown on the Time Record Sheets.
- 18.2 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 acts or omissions of third parties and/or the Hirer's misuse, misdirection or negligence, subject however to the provisions of Clause 8 of this Agreement.
- 18.3 Breakdown time in respect of such periods shall be allowed for not more than 8 hours Monday to Friday less the actual hours worked.
- 18.4 Plant shall be hired out at "per day" or "per week" or "per hour" as stated on the Hire Order for a provisional hire period. The Hirer accept no liability for hire periods that do not match those stated in the order and no loss of profit or consequential losses will be entertained. Conversely, additional hire periods will be charged at no greater rate than those contained within the order.
- 18.5 Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one stoppage and any excess will be charged for at the appropriate time rates.
- 18.6 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.
- 18.7 The Hirer will not accept any changes to hire rates or terms by the Owner after commencement of hire unless accepted in writing by the Hirer
- 19. PLANT HIRED ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS**
- 19.1 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 of the average working day. No hire charge shall be made for Saturday and/or Sunday unless the Plant is actually worked and deliveries after 16:00 are to be exempt of from hire charges until the following working day.
- 20. PLANT HIRED BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS**
- 20.1 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 pro rata of the agreed weekly rate or pro rata of the agreed monthly rate will be made for each full working day broken down calculated to the nearest half working day.
- 21. ALL-IN RATES**
- 21.1 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)**
- 22.1 The hire period shall commence from the time when the Plant arrives on site and shall continue until the Plant has left site. If the Plant is used on day of travelling, full hire rates shall be paid for the period of use on that day. If more than one day is 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 arrival on site to the date of removal from site.
- 22.2 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 16, and,
- (ii) the Plant is moved by means other than under its own power, and,
- (iii) the Plant shall have been on the site specified in the Contract or on any other site to which consent to transfer has been given under Clause 16 for a period of at least 14 days.
- 23. NOTICE OF TERMINATION OF CONTRACT**
- 23.1 Termination of hire can be given by the Hirer's authorised representative by telephone, email, post, fax or in person. The Plant will be deemed to be off hire immediately upon receipt by the Owner of such initial notification (the "time of off hire") and not any subsequent confirmation unless the Hirers authorised representative specifies a date and a time in the future from when the termination of hire shall be effective. The Owner shall respond to the Hirer with an off hire number within one hour of receiving the Hirer's instruction (unless outside normal working hours) and the response shall be in a format of the Owners choosing.
- 23.2 The Owner shall be given two working days to collect the Plant from the time of off hire. The two working day period shall commence on the working day following the Hirer's notification of off hire. Any Plant left on site for more than this period will be at the sole risk of the Owner and the Hirer shall accept no liability for loss, theft or damage incurred. The Hirer shall cease to insure the Plant with effect from the commencement of the third working day after the notification pursuant to clause 23.1.
- 23.3 Unless otherwise agreed within this Hire Order the Owner is responsible for arranging transportation, loading and offloading of the hired goods from the site. Collection charges shall only be accepted by the Hirer where these are notified to the Hirer at the time off the order and included within this Hire Order
- 23.4 If the Owner:
- (i) breaches the terms of this Contract and has failed to remedy the breach within two days of receiving a notice from the Hirer specifying the breach relied upon and requiring the Owner to remedy the breach; or
- (ii) in the opinion of the Hirer suffers an adverse or potentially adverse alteration to its financial capacity
- the Hirer may terminate this Contract by notice in writing to the Owner.
- 23.5 In the event this Contract is terminated in accordance with the provisions of Clause 23.4 the Hirer:
- (i) may take over and use or have removed from the site the Owner's Plant and equipment;
- (ii) is not obliged to make any further payments to the Owner; and
- (iii) is to be indemnified by the Owner against all loss and damage occasioned by the Hirer, or its workers, employees, agents or a sub-contractor or any of them.
- 23.6 The Owner's only entitlement if the hire arrangement under this Contract is terminated under Clause 23.4 is to be paid:
- (i) the proportion of the Contract Price which is payable to the date of cancellation for the hire of the Plant in accordance with this Contract; and
- (ii) all reasonable direct costs incurred by the Owner as a result of the cancellation (subject to the Owner having taken all possible steps to litigate these costs)."
- 24. IDLE TIME**
- 24.1 When Plant is worked 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 in accordance with Clause 21 idle time is charged on the machine element only. Full rate will be charged for the operator.
- 24.2 Where machines stand, the operator's time will only be paid to make up the normal week at an agreed figure to represent the cost of the operator, normally this figure will be negotiated at the time the hire is arranged.
- 25. WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT**
- 25.1 All chargeable items shall be paid by the Hirer at the rates contracted save that any subsequent increases before and/or during the hire period arising from awards under any wage agreements and/or from increases in the employer's statutory contribution shall be charged as additions at cost by the Owner and shall be admitted and paid by the Hirer.
- 27. TRAVELLING TIME AND FARES**
- 27.1 Travelling time and fares / expenses for operators' incurred at the beginning and end of the hire period 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 or repair of maintenance Plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the Plant
- 28. FUEL, OIL AND GREASE**
- 28.1 Fuel, oil and grease shall, when supplied by the Owner shall be charged at net cost and when supplied by the Hirer, shall be of a grade or type specified by the Owner.
- 29. SHARPENING OF DRILLS/STEELS ETC.**
- 29.1 The cost of re-sharpening shall be borne by the Hirer. Diamond wear shall be measured and agreed on collection and signed for by the Hirers Project Manager or his authorised representative.
- 30. OWNER'S NAME PLATES**
- 30.1 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.
- 31. TRANSPORT**
- 31.1 The Hirer shall pay the cost of, and if agreed with the Owner, arrange transport of the Plant from the Owner's depot or equal to the site and return the same to the named depot or equal on completion of the hire period.
- 31.2 Where an Owner's vehicle is to be used to carry waste, the Owner will produce for inspection by the Contractor's Site Management his Certificate of Registration or an official copy thereof, issued in accordance with The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations
- 32. GOVERNMENT REGULATIONS**
- 32.1 The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Factories Acts, Health and Safety at Work Act etc 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 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.
- 32.2 The Owner is required to comply with the requirements of the Health & Safety at Work 1974, Act as amended by the Consumer Protection Act 1987, the control of Substances Hazardous to Health Regulations 1994, in particular the requirements that articles and substances will be safe and without risk to health at all times and that information about any conditions necessary to ensure that they will be safe and without risk to health is provided.
- 32.3 The Hirer's Site rules appertaining to delivery vehicles carrying out tipping and reversing manoeuvres must be complied with. The Owner Delivery drivers must acquaint themselves with these rules, which are available from the Hirer, before undertaking any such manoeuvre.
- 32.4 The Owner undertakes that whilst working upon any premises or site occupied by the Hirer it shall observe all the Hirers site rules, health and safety regulations, and if requested to do so by the hirer, the owner shall attend any site or health and safety induction course. If any of the Owners servants or agents commits any breach of the Hirer's site rules or health and safety regulations, the Hirer shall be entitled to request the Owner to remove such servant or agent.
- 33. PROTECTION OF OWNER'S RIGHTS**

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- 33.1 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 15 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.
- 33.2 If the Hirer fails to pay sums properly due and payable to the Owner in accordance with Clause 39 for the 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 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 shall do or 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 Contract may forthwith be determined by notice from the Owner to the Hirer (notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature). The Contract shall thereupon be deemed determined by reason of the Hirer's breach and it shall be lawful for the Owner to retake possession of the said Plant 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 any of the Owner's rights and remedies. In particular, without limitation, the Owner shall be entitled to claim the hire charges outstanding as at the date of determination of the hire under this clause, return transport charges under clause 31, and damages for the Hirer's actual or deemed breach of the Contract under this Clause.
- 34 Enforced Transference of Contract**
- 34.1 In the event of any item or items of the Plant comprised in this Agreement 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 of the Hirer under such contract ("the Employer"), the Owner will upon request in writing make 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 33 hereof such Employer shall be entitled to permit the use thereof of any other contractor employed by him for the purpose of completing the works of buildings comprised in such contract.
- 35 Fixed Price**
- 35.1 This is a fixed price contract and is not subject to any price fluctuation in the rates of hire.
- 35.2 The Hirer will not accept any changes to hire rates or terms by The Owner after commencement of hire unless accepted in writing by the Hirer."
- 36 Publicity**
- 36.1 The Owner shall not disclose or divulge any information about this Contract or about other agreements or activities associated with this Contract unless it is necessary for the performance of this Contract or unless The Owner has prior written approval from The Hirer. The Owner shall also ensure that its employees, agents, advisers, sub-suppliers or any other person or company connected to the Contract to whom any information is disclosed shall be bound by a like confidentiality undertaking.
- 36.2 The Owner shall not, without the prior written approval of The Hirer take or knowingly permit to be taken by, employees, agents or third parties any photographs or video footage of the site for use in any publicity or advertising or publish, whether alone or in conjunction with any other person, any articles, photographs, video footage or other illustrations nor shall it impart to any publication, journal or newspaper or any radio or television programme or internet site or any other media of whatever nature any information regarding the site.
- 37 Exchange Rate**
- 37.1 All rates detailed herein are Pounds Sterling. Additionally, all monetary transactions relating to this order shall not be subject to the Exchange Rate between Sterling or the Euro (or any other currency) unless expressly stated herein.
- 38 Personal Protection Equipment**
- 38.1 The Owner shall provide (at his cost) appropriate Personal Protection Equipment (PPE) to comply with the relevant British Standards to all his employees, including but not limited to:
- Safety Helmet
 - High Visibility Waistcoat (Orange)
 - Protective Footwear (Steel toe-cap boots with protective midsoles)
 - Gloves
 - Light Eye Protection
 - Goggles
 - Failure to provide the above PPE will result in the Owner's employees not being allowed to work on the site.
- 38.2 The Owner shall carry out PPE assessments for specific types of activities that may require further protection than the above items can provide and shall provide any additional protective equipment required at his cost.
- 38.3 The Owner will be deemed to have visited the site prior to commencement of the hire period and satisfied himself as to the local access conditions and the conditions of the site on completion of the hire period.
- 39 Payment**
- 39.1 As and when monies are due to the Owner, the Owner shall present to the Hirer a valid VAT invoice for the total amount due, together with such supporting documents as the Hirer may require. Such invoices are not to be submitted more frequently than monthly. The date on which the Hirer receives a valid VAT invoice shall be the due date for payment.
- 39.2 The Hirer is not obliged to make a payment under the above Clause 39.3 unless the Owner has:
- (i) Effected the insurance required
 - (ii) Provided the Hirer with all necessary health and safety plans
 - (iii) Provided details and evidence of the Owner's tax certificate particulars
 - (iv) Supplied an invoice with split cost for the Plant and separate detail for operator cost
 - (v) Not quoted a valid full hire order
 - (vi) An invoice quotes more than one hire order number, an invoice per hire order number is to be submitted.
 - (vii) An invoice quotes an incomplete hire order number
 - (viii) An invoice states "hire order to be arranged"
 - (ix) An invoice quotes the Hirer's member of staff and not a valid hire order number..
- 39.3 Unless otherwise stated in the Hire Order and subject to clause 39.1 and 39.2 the Hirer shall pay the price of the Plant together with any applicable Value Added Tax in respect of which an invoice has been issued within 28 days after the date of the invoice, or current period end which ever is sooner.
- 40 Insurance**
- 40.1 For the duration of the Hire Period the Owner is required to maintain:
- (i) Employer's Liability Insurance with a limit of indemnity of £10,000,000 for each and every claim;
 - (ii) Public Liability Insurance with a limit of indemnity of £10,000,000 for each and every claim (such policy to include an 'indemnity to principals' clause which accords with market practice in the UK construction insurance industry so that the interest of the Hirer is noted under the policy such that the Hirer is notified in the event of any liability caused by the Owner and that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against the Hirer and any failure by the Owner or Hirer to observe and fulfil the terms of the policy will not prejudice the recovery of insurance proceeds by the other insured and that the insurers agree to indemnify the Hirer in respect of all costs, losses or other sums arising out of any liability or alleged liability of the Owner in so far as any claim is also made against the Hirer); and
- Upon any request by the Hirer, the Owner shall supply documentary evidence to confirm that these insurance policies are in place.
- 40.2 The Owner shall bear the risk and indemnify the Hirer against loss of or damage to the site, including (without limitation) all works being carried out thereon and indemnify the Hirer against any liability to or claim by a third party including but not limited to all claims by any person whatsoever for injury or death to persons and loss or damage to property and in respect of all costs and charges in connection therewith under statute or at common law (subject always to Clause 8) or the operation thereof by the Owner's employees, servants or agents."
- 41 Programme**
- 41.1 The Owner must perform its contractual obligations under this Agreement so as to achieve timely completion of all milestones in the Hirer's programme.
- 43 Third Parties**
- 43.1 This 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 the Owner's rights is deemed to become party to this Contract after the date of succession or assignment (as the case may be)."
- 44 Adjudication**
- 44.1 Any disputes arising out of or under this Contract may be referred by either party for the decision of an adjudicator who shall be agreed by the Parties or failing agreement shall be appointed by the President of the Royal Institute of Chartered Surveyors and the adjudication shall be carried out in accordance with the Scheme for Construction Contracts (England & Wales) Regulations 1998 or any amendments thereto. The adjudicator's decision shall be binding until finally agreed in writing between the parties or by litigation
- 45 Sustainable Procurement**
- 45.1 The Owner recognises that its operations directly impact on the natural and human environment and actively seek the co-operation of Sellers in minimising adverse effects.
- 45.2 The Owner shall deliver the Plant to site through the most economical and environmentally-friendly means practical (using low emission vehicles / bulk deliveries where agreed / reduced distances).
- 45.3 The Owner shall not unlawfully discriminate, and shall procure that its employees and agents do not unlawfully discriminate, within the meaning and scope of the Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995 and any amendments to or re-enactments of those statutes.
- 45.4 The Owner acknowledges that the Hirer is under a duty to have due regard to the need to:
- promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
 - eliminate unlawful discrimination; and
 - promote good relations between persons of different racial groups, religious beliefs and sexual orientation and the owner shall assist and co-operate with the Hirer where possible to enable the Hirer to satisfy their duty.
- 45.5 The Hirer must supply social, environmental and waste data relating to their operations on behalf of the owner when a request is made (e.g. safety statistics, environmental incidents, management systems).
- 46 General**
- 46.1 Competition law develops and evolves over time but most important sources of law at present are the Competition Act 1988, which prohibits anti-competitive agreements and the abuse of a dominant position, and the Enterprise Act 2002, which introduced criminal sanctions for cartels. The Owner shall at all times observe, perform and comply with all statutory and other obligations of all current Acts and shall indemnify and keep indemnified the Hirer from and against all of the breach or non-compliance of any such obligations.
- 46.2 Substance misuse (alcohol and drugs etc)
- Any personnel delivering to or visiting site shall comply with the Hirer's and any client imposed Substance Misuse/abuse Policy. The Hirer's Substance Misuse Policy sets minimum standards in respect of substance misuse rules and procedures. Appropriate information on the substance misuse policy and work rules can be provided by the Hirer on request.
- The Owner shall ensure that personnel under their control submit themselves for random, post-accident/incident or "for cause" testing for alcohol and or drugs if requested by the Hirer's site management. The Hirer reserves the right to refuse entry or remove from site any of its visitors or suppliers who appear unfit through substance misuse. Illegal drugs or alcohol shall not be brought within the site boundary