

FORSYTH



MOBILE CRANE HIRE



TRANSPORT SERVICES



TOWER CRANES



PROJECTS



Stirling, Scotland



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01324 822 141



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GENERAL CONDITIONS OF HIRE FOR CRANE SUPPLY



CONDITIONS OF HIRE

We generally operate to the CPA model Conditions of Hire with the additional conditions set out in this letter. These Conditions expressly exclude Clause 13 (C) iii and iv of said CPA Conditions. See page 10 of this document for further definitions of these exclusions. A copy of the CPA conditions can be forwarded on request.

ORDERING CRANES

Cranes must be booked via the Central Hire Desk

- TELEPHONE (24 HRS) - +44 1324 822141

CONTACTS

- Hire Desk Manager - Alan McCaig + 44 7771 872 482 alan@forsythofdenny.com
- General Manager - Mark Syme + 44 7918 555 333 mark@forsythofdenny.com
- Cathal McNally + 44 7918 556 826 cathal@forsythofdenny.com

HIRING & OFF-HIRING

- It is not sufficient to inform a driver on site.
- Bookings are not accepted unless they are firm.
- We cannot guarantee provisional bookings.
- Cranes on long term hire must be off-hired the day previous to the crane leaving site.
- Cranes can only be off hired by phoning or e-mailing the Hire Desk.
- Most customers now operate a Purchase Order (PO) number system. PO's must be issued at the time of the booking.
- Please find a sample of our Crane Hire Jobsheet on the last page of this document which will be e-mailed to you prior to the date of the hire, listing all agreed Hourly rates etc.

Extension of Hire

- The hire period is defined at order stage.
- The hire period can only be extended by agreement with the hire co-ordinator.
- In some cases, the hire period cannot be extended at short notice due to prior commitments i.e. crane booked for another client.

Depot Information

CENTRAL HEAD OFFICE



Forsyth of Denny Ltd

Easterton

Stirling Road

Stirlingshire FK6 6RF

T - 01324 822141

W – www.forsythofdenny.co.uk



Irvine Depot



FORSYTH of DENNY LTD
DUNLOP PLACE
MEADOWHEAD IND EST
IRVINE
KA11 5BJ



General Terms

To avoid needless delays at invoice stage, the following information **MUST** be given when **booking** the crane:

- Purchase Order number (PO)
- Name of person responsible for the order.
- Exact site details – location plus directions to site.
- Job Details including load / radii criteria (see below)
- Responsible person on site.
- Date, Time etc.
- Invoice Address.

Job details should be presented at booking stage. For crane selection, the following data is needed:

- Job type.
- Load.
- Radius – distance from centre of crane slew ring to centre of load.
- Height.
- Obstructions etc.

We bear no responsibility for selections:

- a) By client.
- b) Based upon inaccurate data.

CANCELLATIONS

Cancellations only accepted by phoning or e-mailing the Hire Desk.

1) Small cranes 40T to 100T.

- Up to 4.00p.m. on evening prior to job: No charge.
- After 4.00 p.m.: 50% of minimum hire.
- After 6.00 p.m.: 80% of minimum hire.
- After crane has left depot: Full minimum hire.

2) Cranes: 100T to 350T.

- Up to 24 hrs: No charge if no logistics costs, i.e. ballast or sections delivered prior to start date. Otherwise logistics costs will be charged.
- Less than 24 hrs: 25% of hire + logistics costs.
- After crane has left depot: Full hire charge

3) Heavy Cranes: 500T +

- Up to 72 hrs: No charge if no logistics costs, i.e. ballast or sections delivered prior to start date. Otherwise logistics costs will be charged.
- Between 72 and 48 hrs: 50% of hire + logistics costs.
- Less than 48 hrs: Full hire charge

SCOPE OF SUPPLY

For non contract hire our scope of supply includes:

- Certified Crane + Fuel
- Certified Driver.
- Certified Standard tackle.
- Standard Outrigger support mat / pads. (See outrigger load guide).

A copy of our Method Statement & Risk Assessment for Crane Mobilisation can be forwarded to you (for inclusion in your RA/MS package) on request.

Lifting Gear

All cranes come supplied with a selection of chains, shackles, and nylon web slings. Some jobs are specific and may require special tackle. If this is so, please inform us when the crane is being booked. We have an excellent selection of heavy wire ropes, spreader beams, heavy shackles, turnbuckles and snatch blocks available on request.

- Non-standard tackle supplied at a cost to be agreed.
- We accept no liability for delays due to tackle inadequacy. The only exception to this is where pre-booked tackle does not arrive.

DAMAGE TO TACKLE

- Damaged tackle will be charged at full replacement cost.

Type Of Supply – Contract Lift or CPA Crane Hire – Definitions

Given the wide variety of contractual arrangements used in the construction industry, it is important to ensure that the planning, organization control and management of lifting operations is not compromised. In general, any organization requiring a load to be moved by crane, which does not have its own craneage, has two basic options: hiring a crane (**Hired Crane**) or employing a contractor to carry out the lifting operation (**Contract Lift**).

If an individual or organization does not have expertise in lifting operations (***i.e. have their own crane Appointed Person and Crane Supervisor and be competent in the planning and execution of lifting operations***) they should not engage in a CPA 'Hire' arrangement, but should opt for a contract lift.

Before entering into a contract, employing organizations should satisfy themselves that the contractor has the necessary competence to carry out the work.

NOTE: Responsibilities for insurance in terms of the crane, personnel, the load and third parties may also need to be clarified. This can be checked in the Liability Cover section of these Terms and Conditions.

EMPLOYING ORGANISATION

The organisation requiring the load to be moved.

**Hired Crane
(Hired and Managed)**

The employing organisation must:

Carry out all work in accordance with BS7121-3:2017 +
A1:2019 / I.S.360.20019

Supply the "appointed person".

Plan the lift and operate a safe system of work.

Ensure that the crane hired is of a suitable type and
capacity.

Check the credentials of
the crane hire company and certification supplied.

The crane owner has a duty to:

Provide a crane that is properly maintained tested and
certificated

Provide a competent driver.

**Contract Lift
(Fully Contracted)**

The employing organisation should specify:

That all work is to be undertaken in accordance
with

BS7121-3:2017 + A1:2019 / I.S.360.2019

That the Contractor is to supply the "appointed
person".

What information and /or services will be provided
to the contractor by the employing organisation.

The contractor is responsible for:

Supplying the "appointed person",
Planning the lift, and operation of a safe system of
work.

Organisation and control of the lifting operation.

CONTRACT LIFTING OPERATION

The employing organization may enter into a contract with a contractor who undertakes the work on their behalf

The parties to the contract should ensure that:

- a) all work is carried out in accordance with the BS7121-3:2017 + A1:2019 series;
- b) the contractor appoints a competent crane “Appointed person” to the satisfaction of the employing organisation;
- c) all information or services provided by the employing organization to facilitate compliance with the BS7121-3:2017 + A1:2019 series are notified to the contractor in writing.

The contractor should carry out lifting operations in accordance with the BS7121-3:2017 + A1:2019 series. The contractor should be given full authority by the employing organization to work in accordance with the BS7121-3:2017 + A1:2019 series including, where appropriate, authority to control and instruct the employing organization’s personnel.

NOTE: Although the BS7121-3:2017 + A1:2019 series is intended to assist organizations to comply with their statutory and common law obligations, it does not relieve them from these obligations. Before entering into a contract, employing organizations should ensure that the contractor has the necessary competence to carry out the work in accordance with the BS7121-3:2017 + A1:2019 series.

User’s duties under standard CPA Hired agreement:

When a crane is hired out together with an operator to the user organization, the crane owner should provide a competent operator and a crane that is properly maintained, inspected and tested in accordance with BS7121-3:2017 + A1:2019, and has a current report of thorough examination.

The user organization retains the responsibility for nominating a competent appointed person and for following the recommendations given in the BS7121-3:2017 + A1:2019 series. Notwithstanding any advice the crane owner might have offered concerning the selection of a particular crane or any other relevant matter, for example clearances, ground conditions, the responsibility for ensuring that the crane is of a suitable type, size and capacity for the task being undertaken and for planning the operation remains with the user organization. Therefore, if an individual or organization does not have expertise in lifting operations, they should not hire cranes but should opt for a contract lift.

GROUND CONDITIONS

- a) The hirer must provide ground conditions that are safe for crane during travel, rigging and operation. This also applies to trucks and ancillary vehicles.
- b) Ground must be capable of sustaining axle loads of up to 18 Tonne. (Depends on crane size)

Outrigger Load Guide

Crane:	Max o/r loading	General Pad Size
Up to 50te:	~ 40T	0.6m x 0.6m
Up to 80te:	~ 65T	1m diameter
Up to 100te:	~75T	1m diameter
Up to 200te:	~100T	2.4 x 2.4m **
Up to 300te:	~125T	2.4m x 2.4m **
Up to 500te:	~190T	3.5m x 2.4m **
Up to 1000te:	~340T	2.5m x 5.5m or 2.2m x 7.0m **

**** Only if support vehicle supplied as part of pre-agreed supply. For cranes on 'Taxi' or 'Travel Ballast' Configuration, smaller mats (~ 1.2m diameter composite Discs) will be supplied. Please contact the office for specific details.**

- c) All costs due to the recovery of cranes on failed ground will be due to the hirer.
- Recovery costs.
 - Stricken Crane hire cost + cost of additional craneage required for recovery.
 - Cost of damage to crane.
 - Reinstatement.
 - Injuries to staff and third parties.

This applies to site roads, site access public roads etc.

EXCLUSIONS TO CPA CONDITIONS

Under CPA Conditions of Hire, Clause 13 (C) iii and iv outline the exceptions to the hirer being liable for the loss.

However – Clause 13 (C) iii and iv are **EXPRESSLY EXCLUDED** from these Forsyth of Denny Terms for such times when a crane must leave the main Public Highway (***) and travel along single carriageway class routes to access the Hirers site. Hirers should be aware that they are responsible for the safe Access and Egress of all cranes along such routes from the Main Public Highway (***) to the Hirers site entrance and in addition, must satisfy themselves that such roads are capable of withstanding axle loadings of up to 18t per axle.

(*) – Any roadway with dual carriageway or white line in centre.**

CONSEQUENTIAL LOSSES

We do not accept any consequential losses due to crane breakdown, late arrival etc which are normally due to forces beyond our control.

If the service is delivered we expect full payment.

NORMAL CAUSES OF DELAYS

- Tyre failure.
- Mechanical – electrical breakdown.
- Operator sudden illness.
- Accident en-route to site.
- Crane held over by previous client.
- Weather.
- Direction by statutory body.

We will only negotiate on the charge where the delay mal-performance is due to our negligence.

LIABILITY COVER

- a) EL/PL cover is £10m
- b) We do not cover third party liability.

Risks Not Covered :

- Ground failure.
 - Sabotage.
 - Third party negligence.
 - Failure of third party load or lifting device.
- c) All costs due to damage to plant or our personnel injuries whilst on hirers site shall be to the hirers account if the fault is shown not to be ours, or our agents or servants.

Note that under non-Contract Lift conditions the responsibilities in general rest with the hirer as the crane is under the hirers direct control.

- d) Hirers E/L policy to be extended to include our employees whilst on hirers site and under hirer's control.
- e) Under Hook Cover.

Under hook cover is not included and is available at additional cost upon request.

- 1) CPA Hire (non-Contract Lift)
 - not included
 - can be provided at extra cost upon provision of details of load.
- 2) CPA Contract Lift
 - included as part of rates up to a value of £17,000 per item being lifted.

Items with a higher value must be advised by e-mail in advance by the hirer.

Unless actual value is stated by e-mail in advance of lifting operations, we will assume that items being lifted do not exceed this value, and that adequate cover has been put in place by the hirer.

For items which have a value of more than £17,000 we can provide insurance cover at a rate of 0.4% + VAT of the value of the item. For Example - For an item valued at £100,000 insurance cover will be £400 + VAT which will be chargeable to the customers account.

f) Driver Rigger Hire

When a driver, operator or any person is supplied by FORSYTH of Denny (FOD), FOD Management shall supply a person competent in operating the plant identified to the Hirer on the date of the contract or for such purpose for which the person is supplied (including but not limited to Slinger / Signaller, Crane Supervisor etc) and such person shall be under the direction and control of the Hirer. Such drivers or operators or persons shall not operate any plant other than that identified by the Hirer to FOD Management prior to the date of the contract or for such purpose for which the person is supplied, unless FOD Management has given his/her prior written agreement. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of any plant or for such purpose for which the person is supplied be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of Clause 13 of the CPA Conditions of Hire) who also shall be responsible for all claims arising in connection with the operation of any plant by or such work carried out by the said drivers / operators / persons.

Drivers/Riggers when supplied by FORSYTH of Denny to third parties, will be assumed to work under third party instruction and sign on to their site specific method statements and risk assessments. It is the hiring party's responsibility to satisfy themselves that the supplied labour is suitable for the task they are to be assigned and properly trained, complete with all relevant supporting certification. It is also assumed that the supplied labour will carry out said tasks as instructed by third party supervisor.

FORSYTH of Denny cannot be held liable for any loss or damage to third party property, consequential loss or claims arising as a result of delays due to damages caused by, or negligence of our employee.

g) Site Security :

The hirer is at all times responsible for site security. All costs due to malicious damage, theft etc shall be to the hirer's account.

h) Punctures – Tyre Damage

The cost of puncture repairs / tyre replacement due to cuts by debris (eg – protruding re-bar or rough stone) incurred on site shall be due to the hirer.

i) **Hired-In Plant Cover.**

All hirers must provide the following hired in plant cover as follows:

<u>Capacity</u>	<u>Value</u>
Favco *	£200k
CWE **	£300k
40t	£325k
45t	£395k
50t	£495k
55t	£520k
60t	£520k
70t	£550k
80t	£575k
90t	£625k
100t	£700k
110t	£750k
130/140t	£850k
160t	£950k
200t	£1,1m
230t	£1.35m
500t	£2.9m

* Favco : 30t Telescopic Crawler Crane

** CWE : Compact Knuckle Boom Crawler Crane

CHARGE BASIS :

Small Cranes 40T to 100T

- Hourly rate ex nearest depot.
- For short notice bookings charge will be ex available depot.
- Travel time is calculated each way.
- Minimum travel time is 1 hour each way.

Heavy Cranes

- 160T to 500T Normally priced individually.
- Mob – demob + 10 hrs = lump sum. Daily minimum is 10 hrs.

Minimum Hire :

40t	-	8hrs
50t	-	8hrs
80t	-	10hrs
100t	-	10hrs
160t	-	10hrs
230t	-	10hrs
500t	-	10hrs

TERMS OF PAYMENT

a) Account

Strictly **30 days** net monthly account.

Example work in January must be paid in full by end February.

Interest will be charged on overdue accounts.

b) New Customers

Credit card payment will be required by all new customers until we can establish a common trust. Jobs booked without official order numbers will require payment by credit card.

LARGER CRANE

We reserve the right to substitute the specified crane with an equal or larger crane. (At rate of chosen crane except where agreed in advance).

Sample Crane Hire Jobsheet

Job No:	BL.	Date:	.
Received By:	.	Order No:	.
Customer Name:	.	Ordered By:	.
Address:	.		
	.		
	.		
Postcode:	.		
Office Telephone No:	.	Email:	.
Item of Plant ordered:	.	Extra Items:	.
Contract Lift: <input type="checkbox"/>	Crane Hire: <input type="checkbox"/>	Slinger Signaller: <input type="checkbox"/>	Rigger: <input type="checkbox"/>
Other Items:	.		
Date Required: .	Duration of Hire: .	Time Onsite: .	
Job Detail:	.		
Site Location:	.		
	.		
Directions:	.		
Site Contact Name and Number: .			
Max Load: .	Radius: .	Height of Lift: .	
Site Visit Required: <input type="checkbox"/>	Travel Time: <input type="checkbox"/>	Hours Each Way: .	
Special Instructions: .			
<u>Payment Arrangements</u>			
Account: <input type="checkbox"/>	Cheque: <input type="checkbox"/>	Credit Card: <input type="checkbox"/>	Cash: <input type="checkbox"/>
Price Quoted: .	Overtime: .	Sub: .	VAT: .
Price for Extras: .	Delivery: .	Minimum Hire: .	
Insurance Required: <input type="checkbox"/>	Insurance Details: .		
Terms & Conditions Attached: <input type="checkbox"/>		Site Visit Template Attached: <input type="checkbox"/>	



MODEL CONDITIONS FOR THE HIRING OF PLANT (With effect from July 2011)

These conditions are not to be used for consumer contracts.

A consumer contract is a contract entered into with a person acting in their own capacity and not for or on behalf of any business or trade entity.

1. DEFINITIONS

- 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.
- 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 other agreed location. For the avoidance of doubt the Hire Period includes the time Plant is left on site during a Holiday Period.
- 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.
- "Holiday Period" covers any cessation of work over Easter, Christmas and the New Year, as well as any other Bank or Public holidays.
- "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.
- The "Owner" is the Company, firm or person letting the Plant on hire and includes their successors, assignees or personal representatives.
- "Plant" covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefor, which the Owner agrees to hire to the Hirer, or anything which is supplied by the Owner to effect the hire, and anything supplied by the Owner for the safe operation and routine inspection and maintenance of the Plant.
- A "Working Day" shall be from 8.00 am to 4.30 pm, Monday to Thursday, and 8.00 am to 3.30 pm, on Friday allowing a half-hour lunch break each day, unless otherwise specified in the Contract.
- A "Working Week" covers the period from 8.00 am on Monday to 3.30 pm on Friday, unless otherwise specified in the Contract.

2. EXTENT OF CONTRACT

No terms, conditions or warranties other than as 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 or conditions which the Hirer may seek to apply under any order or acknowledgement or acceptance or similar document and supersedes 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 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 the Plant on site implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing.

4. UNLOADING AND LOADING

The Hirer shall be responsible for the unobstructed access and egress and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site; and any personnel supplied by the Owner for such unloading and / or loading 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 13) who shall be solely responsible for all claims arising in connection with unloading and / or loading of the Plant by, or with the assistance of, such personnel.

5. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

- 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 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 the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and / or the Owner's recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted).
- 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 is continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising therefrom.

- 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. 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 practicable the Hirer shall allow such access during the Working Day.

7. GROUND AND SITE CONDITIONS

- The Hirer is deemed to have knowledge of the site or the 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.
- If, in the opinion of the Hirer, the ground (including any private access road 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.
- Any timber or other material supplied by the Owner is provided solely to assist the Hirer under their duties within clause 7(b) and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the Plant.
- The Hirer is 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 and roadways on or adjacent to the site and the Hirer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

8. HANDLING OF PLANT

- 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 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) and the Hirer shall be solely 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 prior written consent.
- Such drivers or operators or persons shall not operate any other plant or 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.

9. BREAKDOWN, REPAIRS AND ADJUSTMENT

- Any breakdown or the 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.
- Full allowance for the hire charges set out in the Offer will be made to the Hirer for any stoppage due to breakdown of the Plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of the Contract.
- The Hirer shall not (except for the changing of any tyre and repair of punctures), repair, modify or alter the Plant without the prior written permission 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 / repaired. The Hirer is responsible for all costs incurred in the changing or replacement of any tyre (which must be of an equivalent specification) as approved by the Owner and for the repair of any puncture.
- The Hirer shall be responsible for all expense involved 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 25, during the period the Plant is necessarily idle due to such 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.

10. OTHER STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" (clause 9) or for "Idle Time" (clause 25), 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 any Plant from soft or unsuitable ground, 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.

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11. 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 expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

12. 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 indirect or consequential 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 Owner's 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.

13. 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, 8 and 9 of these conditions.
- (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 9 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 the 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 of or damage to the Plant, hire charges shall be continued at idle time rates as defined in clause 25 until the settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or idle time charges can be reinstated from the date of that agreement. Should idle time charges be re-instated, the agreed settlement figure remains payable in full.
- (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 (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving such highway) 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, provided always that such erection / dismantling 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 on a highway maintainable at the public expense (or where the site is not immediately adjacent to a highway maintainable at the public expense after it has joined such highway) 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 a highway maintainable at the public expense (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving such highway) under its own power with a driver supplied by the Owner.

14. NOTICE OF ACCIDENTS

If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Hirer 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 to fully indemnify the Owner, no admission of liability, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's prior written permission.

15. RE-HIRING ETC.

Neither the Plant nor any part thereof shall be re-hired, sub-let, or lent to any third party without the prior written permission of the Owner.

16. CHANGE OF SITE

The Plant shall not be moved from the site to which it was delivered or consigned without the prior written permission of the Owner.

17. RETURN OF PLANT FOR REPAIRS

If during the Hire Period the Owner decides that urgent repairs to the Plant are necessary then he may arrange for such repairs to be carried out on site or at any location of his nomination. In the event that urgent repairs to the Plant are necessary 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 9 and / or 13) 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 9 and / or 13) 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 9 and / or 13) 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 9 and / or 13) shall be liable only for the cost of reloading and return transport.

18. 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. When any personnel, operator or driver is supplied by the Owner, the Hirer shall sign their time record sheets. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time records 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 acts or omissions of third parties and / or the Hirer's misuse, misdirection or negligence, subject however to the provisions of clause 8 of these conditions.
- (c) Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.
- (d) Plant shall be hired out either:
 - (i) for a stated minimum number of hours per Working Day or per Working Week or,
 - (ii) without any qualification as to minimum hours. Odd days at the beginning and at the end of the Hire Period shall be charged pro rata.
- (e) 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 idle time rates.
- (f) In the case of Plant which is required 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 the Hire Period, such modification of the hire charge and the Hire Period for which it shall apply shall be stated in the Offer / Contract.

19. 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 of the average Working Day. No hire charge shall be made for Saturday and / or Sunday unless the Plant is actually worked.

20. 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 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. PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 39 HOURS PER WEEK

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. Allowance will be made for breakdowns up to 8 hours except on Fridays when the allowance will be up to 7 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 Working Week of 39 hours shall be reduced by 8 hours Monday to Thursday and 7 hours Friday for each Holiday Period occurring in such Working Week, provided that the Plant is not in use during such Holiday Period.

22. "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 26.

23. COMMENCEMENT AND TERMINATION OF CONTRACT (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 other agreed location but an allowance shall be made of not more than one day's hire charge each way for travelling time. If the Plant is used on the 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 Working 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 other agreed location.
- (b) If the Plant is not made available for collection as agreed between the parties, such Plant shall be deemed with immediate effect to be placed back on hire. The Hirer shall be responsible for the safekeeping of the Plant in accordance with clause 13, and for all the reasonable costs and expenses incurred by the Owner in seeking to collect such Plant.
- (c) Upon the completion of the Hire Period, the Hirer shall clean and where necessary, decontaminate the Plant. All fuel and contaminants will be removed from bunds, storage tanks and bowlers. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner should the Hirer fail to comply with this clause.

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24. HIRER'S LIABILITY DURING THE NOTICE OF TERMINATION OF CONTRACT

- a) Where the Hire Period 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 days notice of termination, the Hirer's obligations under clause 13 shall continue until the Plant is returned to the Owner in accordance with clause 31 or until the Owner has collected the Plant within the 7 days following the acceptance of short notice. Oral notice given by the Hirer to the Owner's driver or operator shall not be deemed to constitute compliance with the provisions of this clause.
- b) Without prejudice to clause 24(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 obligations under clause 13 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 24(a) but subsequently and with the consent of the Owner, withdraws such notice, the obligations of clause 13 shall continue to apply and the requirements of clause 24 will apply to any later termination of the Contract.
- 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.

25. 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 rate as is agreed in writing by the Owner for the period during which the Plant is not in use. If the Plant works for any time during the Working Day then the whole of that Working Day 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 18(e). Where an "All-In" rate is charged, idle time is calculated on the machine element only. Full rate will be charged for the operator.

26. 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 Owner'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

Travelling time, fares and similar expenses for drivers, operators and any person supplied by the Owner, incurred at the beginning and end of the Hire Period and where appropriate return fare of the driver, operator and 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 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.

28. 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. 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.

29. SHARPENING OF DRILLS/STEELS ETC.

The cost of re-sharpening or replacement of drill bits, blades and other ancillary items shall be borne by the Hirer.

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

32. GOVERNMENT REGULATIONS

- a) The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Environmental 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 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.

33. 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 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.

- b) The Owner may terminate the Contract forthwith by written notice to the Hirer if one or more of the following events occur:

- (i) The Hirer defaults in punctual payment of any sum 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 the Contract;
- (iii) The Hirer suffers, or the Owner reasonably believes that the Hirer shall suffer, any distress or execution to be levied against him;
- (iv) The Hirer 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 31.

- 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 a 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 the 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.

34. 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 agreed 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 of other than 39 hours. Clauses 1(h) and (i), 18(c) and (d), 20 and (in regard to breakdown allowance and reduction for statutory holidays) 21 shall be deemed to be modified conformably and in the event of an alteration in the normal weekly working hours in the said industry the "Hire Rates and Terms" of Plant hired for a minimum weekly or daily period shall be varied pro rata.

35. DISPUTE RESOLUTION

- a) If the site is situated within the United Kingdom, then the court whose jurisdiction covers the site will have exclusive jurisdiction and interpretation of the 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) Regulations 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.
- c) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment 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.

36. 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.

37. SEVERABILITY

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