

These Terms and Conditions apply to all transactions between Selwood Limited (Selwood) and a Customer for business use only who has requested the opening of a trading account and agrees to be bound by these Terms and Conditions. Plant is hired and Services provided subject to and in accordance with Selwood Limited's Terms and Conditions of Trade (which incorporate, to the extent stated in them, the Contractors Plant Hire Associate (CPA) Model Conditions of Hire).

Issued: 1st July 2013.

### GENERAL TERMS

#### 1. Definitions and Interpretation

These terms apply to all trading relationships between Selwood and its Customers, and are supplemented by particular terms as follows:-

**Section 1** additional terms applicable only to Hire of Plant, Pumps, Equipment and Accessories.

**Section 2** additional terms applicable only to the Sale of Plant, Pumps, Equipment, Parts and Ancillary Products.

**Section 3** additional terms applicable only to any Services provided.

**Section 4** additional terms applicable only to Term Hire of Plant, Pumps, Equipment and Accessories.

In these Conditions

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**"Business Hours"** means 7am to 6pm on a Business Day.

**"Contract"** means a contract under the terms of which Selwood is liable to supply Goods.

**"Customer"** means the party obtaining Goods from Selwood under the terms of a Contract.

**"Goods"** covers all plant, pumps, machinery, equipment and accessories for such things which are the subject of a sale or hire by Selwood, or Services provided together with any tools or equipment temporarily on site for use by Selwood in fulfilling the Contract requirements.

**"Services"** means the provision by Selwood of labour and other activities for the repair or maintenance of plant or the installation of any pump, plant, equipment or accessories and any associated items.

**"Term Hire"** means a Contract whereby Selwood supplies Goods for a period of hire of at least 52 weeks.

The headings contained in these Conditions are for ease of reference only.

#### 2. Price

Quotations and / or estimates provided by Selwood shall only indicate a willingness of Selwood to enter into a Contract on the terms shown provided:-

- (i) that they are in writing, and
- (ii) they will only remain valid for 30 days from the date of issue unless renewed in writing by Selwood or the quotation and / or estimate expressly states otherwise.

Oral orders received to supply Goods will be subject to these Terms and Conditions of Trade.

Quotations and / or estimates only relate to the type and quantity of Goods identified and may not be applicable if different types or quantities of Goods are ordered.

Quotations and / or estimates are made subject to Selwood's costs at the time of quoting. Increases or decreases in these costs and any change in any rates, prices, or charges or upon any change in or imposition of any new governmental taxes, levies or contributions

in connection with the Contract will entitle Selwood to make an addition to or a deduction from the price quoted, unless otherwise agreed and confirmed in writing by Selwood.

Quotations and / or estimates are exclusive of VAT which shall be due at the rate applicable to the transaction at the date of invoice.

Quotations and / or estimates for Goods to be delivered at the Customer's site will only remain valid if access to the site is available to Selwood on the date specified for performance and thereafter without interruption or with only such interruptions as are contemplated in the quotation and / or estimate.

An order shall only become a binding Contract on Selwood and the Customer when delivery takes place or it is acknowledged in writing by Selwood.

If Selwood are denied access to site, or the performance of their obligations under a Contract is hindered for any reason other than Selwood's default under the Contract, the Customer shall be liable for any additional costs incurred by Selwood as a result.

#### 3. Payment

Selwood reserves the right to require full or partial payment in advance of delivery following the issue of a quotation and / or estimate or the receipt of an order in respect of Goods or in any other circumstances as it determines.

Payment of Selwood's invoices in respect of sales of Plant and Pumps, shall be made before delivery, otherwise they shall be due on the last day of the next calendar month after the month in which the invoice was rendered or at such other time as agreed in writing.

Payment shall normally be made in GB£ sterling unless otherwise agreed in writing.

No discounts, commissions, or rebates shall be allowable except as detailed in any quotations and / or estimates issued in writing by Selwood.

If the euro becomes the lawful currency of the United Kingdom, then, with effect from the date on which it occurs, any amount referred to in any Contract in sterling shall be redenominated in euros at the rate and in the manner determined by the relevant legislation.

In accordance with The Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by The Late Payment of Commercial Debts Regulations 2002, and any subsequent amendment thereto, Selwood reserves the right to charge interest on overdue invoices which shall accrue from the date when payment becomes due, from day to day, until the date payment is received by Selwood at the rate of 8% above Bank of England base rate applicable from time to time together with all administration and recovery charges permitted by law.

If payment is more than 30 days overdue, or the credit facility is exceeded, Selwood reserves the right to suspend its performance of any of its Contracts with the Customer and the Customer authorises Selwood to access the relevant site to recover any Goods without prior notice.

The Customer waives all rights to all outstanding and any future claim and rights of set-off against any payments due under any Contracts with Selwood and agrees to pay Selwood all amounts owing to Selwood regardless of any equity, set-off or cross-claim on

the part of the Customer against Selwood. The Customer agrees to the right of Selwood to off-set any monies due under any Contract with Selwood against all monies due to Selwood if settlement is overdue by more than 30 days.

#### **4. Credit Facility**

Selwood may at any time in its sole discretion withdraw any credit facility allowed to a Customer, or to request a Parent Company Guarantee in its preferred form to secure future payments.

If the total amount due to Selwood from a Customer exceeds the amount of the Customer's authorised credit limit, Selwood shall be entitled to payment on demand of the amount by which the credit limit has been exceeded.

#### **5. Recommendations**

Any advice or recommendation given by Selwood to the Customer as to fitness of any Goods for any particular purpose, application, or use which is acted upon by the Customer shall be entirely without liability for Selwood unless Selwood has been provided in writing with all information relevant to such particular purpose, application, or use and Selwood's recommendation is confirmed in writing. Selwood will have no liability to the Customer for any information or recommendation given in good faith by Selwood which proves to be incorrect or inaccurate because of incorrect or incomplete information supplied by the Customer.

#### **6. Delivery**

Unless the manner of delivery is specifically identified in the quotation and / or estimate Selwood shall have the sole discretion as to the method of transport to be adopted.

A charge will be made for packaging and delivery dependant upon the nature of the Goods supplied and whether made by post, carrier, vehicle or otherwise.

Where Selwood agrees to deliver Goods, Selwood shall only be obliged to deliver the Goods as near to the agreed place of delivery as a safe hard road surface permits. If Selwood agrees to relax this condition at the Customer's request, the Customer agrees to indemnify Selwood for any loss, damage, injury or other costs incurred as a result.

Where delivery is agreed the Customer shall enable unloading to take place in a timely manner and waiting time shall be charged if delays in excess of 30 minutes are incurred at a rate of £100 per hour, or such other sum as Selwood deem appropriate from time to time.

Goods held by Selwood pending receipt of delivery instructions after the agreed delivery date shall be subject to Selwood's standard storage charges.

Selwood may deliver goods by instalments where the Goods are capable of division into units.

#### **7. Warranty**

Goods will be sold by Selwood upon and subject to Selwood's standard form of warranty as current at the time of supply, a copy of which is available on request. No variation to the form of warranty will be binding on Selwood unless specifically agreed in writing by an authorised representative of Selwood.

Material in catalogues, brochures and any other publication or display does not form part of the description of the Goods for the purposes of Selwood's warranty. Technical specifications, materials, colours and design details are subject to change without notice.

Colour indications, whether by means of the provision of samples or derived from colour charts or descriptions, are necessarily approximate, by reason of inevitable variations in the processes of manufacture and reproduction.

#### **8. Time for Performance**

No provision or stipulation as to the time within which Selwood shall perform its obligations under any Contract shall be, or be deemed to be, of the essence.

#### **9. Customer's Obligations**

The Customer shall provide at its own expense the following facilities to enable Selwood to perform its obligations under any Contract:-

- (i) sufficient and safe access to the site where performance is to take place.
- (ii) unloading, haulage and craneage facilities.
- (iii) secure storage facilities for Selwood's Goods.
- (iv) amenities for compliance with health and safety legislation including where appropriate accommodation, and supplies of water and electricity.
- (v) power supply of suitable capacity where specified for the operation of the Goods.

The Customer shall, without cost to Selwood, protect Selwood's Goods whilst being installed from damage by inclement weather or other hazard.

The Customer shall ensure the safe custody of Selwood's Goods and the safety of Selwood's staff at all times whilst on the Customer's site.

The Customer shall ensure that all consents, permissions and approvals necessary to enable Selwood to perform the Contract(s) have been, or will be, obtained by others. Selwood shall have no responsibility whatsoever to obtain the same.

The Customer must ensure that Goods supplied or hired to it by Selwood are used and operated by trained and competent operators and in accordance with the manufacturer's, or Selwood's, recommendations and safety instructions. The Customer shall have sole responsibility for the preparation and implementation of method and risk assessments in respect of any work involving the use of the Goods. The Customer indemnifies Selwood against any claim against Selwood (and all associated costs) resulting from any breach of this provision.

#### **10. Default**

Selwood may by written notice:-

- (i) terminate any or all Contracts with the Customer in the event that the Customer shall (being a corporation) go into liquidation whether voluntary, compulsory or under supervision or have a receiver or administrator appointed or (being a partnership or individual) enter into any agreement with or for the benefit of its creditors or become bankrupt or otherwise insolvent; and / or
- (ii) terminate a Contract with the Customer if the Customer commits a breach of the terms and conditions of that Contract and fails to rectify such breach within 7 days of receipt of written notice requiring it to do so.

#### **11. Limits of Liability**

- (i) All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and / or adequacy are excluded to the fullest extent permitted by law.
- (ii) If Selwood is found to be liable in respect of any loss or damage to the Customer's property the extent of the liability of Selwood will be limited to the retail cost of replacement of the damaged property.
- (iii) Any defective Goods must be returned to Selwood for inspection if requested before Selwood will have any liability for defective Goods.

- (iv) Selwood shall have no liability to the Customer if, without just cause, any monies due in respect of the Goods have not been paid in full by the due date for payment.
- (v) Selwood shall have no liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of the defective Goods after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- (vi) The Customer shall give Selwood a reasonable opportunity to remedy any matter for which Selwood is liable before the Customer incurs any costs and / or expenses in remedying the matter itself. If the Customer does not do so Selwood shall have no liability to the Customer.
- (vii) Selwood shall have no liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that their insurers waive any and all rights of subrogation that they may have against Selwood.
- (viii) Selwood shall have no liability to the Customer for any:-
  - a) consequential losses (including loss of profits and / or damage to goodwill);
  - b) economic and / or other similar losses;
  - c) special damages and indirect losses; and / or
  - d) business interruption, loss of business, contracts and / or opportunity.
- (ix) Selwood's total liability to the Customer under and / or arising in relation to any Contract shall not exceed 5 times the price of the Goods under that Contract or the sum of £5,000 whichever is the higher. To the extent that any liability of Selwood to the Customer would be met by any insurance of Selwood then the liability of Selwood shall be extended to the extent that such liability is met by such insurance.
- (x) Each of the limitations and //or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
  - a) Liability for breach of contract;
  - b) Liability in tort / delict (including negligence); and
  - c) Liability for breach of statutory and / or common law duty;
 except clause 11(ix) above which shall apply once only in respect of all the said types of liability.
- (xi) Nothing in this contract shall exclude or limit the liability of Selwood for death or personal injury due to the negligence of Selwood nor exclude or limit any other type of liability which Selwood is not permitted to exclude or limit as a matter of law.

## 12. Selwood's Intellectual Property

All drawings, designs, illustrations and samples supplied to the Customer shall remain the property of Selwood and shall be returned to Selwood immediately upon Selwood's request. All copyrights, designs, patents and other intellectual property rights of Selwood in or relating to the Goods will remain the property of Selwood at all times.

## 13. Sub-contractors

Selwood reserves the right to perform any of its obligations under any Contract through its agents or sub-contractors.

## 14. Events Outside Selwood's Control

Selwood shall not be liable to the Customer if the performance of any of its obligations under any Contract is prevented or hindered by circumstances outside Selwood's reasonable control including but not limited to fire, accident, industrial disputes, shortages of material and power and failure of Selwood's suppliers.

## 15. General

These terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

No terms which are orally agreed shall form part of a Contract unless confirmed in writing.

No variations to the Contract shall be effective unless and until accepted in writing by an authorised Manager or Director of Selwood and the Customer.

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Selwood which is not set out in the Contract.

Failure by Selwood to enforce a term of a Contract shall not prevent the subsequent enforcement of that or any other terms of a Contract.

Any Contract incorporating these Conditions creates no rights enforceable by any party which is not a party to it under The Contracts (Rights of Third) Parties Act 1999.

In the event of conflict between these terms and any term expressly stated in a written quotation and / or estimate, the terms confirmed in any acknowledgement of order shall prevail.

Goods provided by Selwood under this Contract shall remain at all times the property of Selwood subject only to any specific terms agreed whereby title is passed to the Customer.

The Customer shall not assign any right or liability under a Contract without the express written consent of an authorised signatory of Selwood. Selwood may assign a Contract.

The invalidity or unenforceability for any reason of any clause of these Conditions shall not affect the validity and enforceability of the remainder.

## 16. Dispute Resolution

If any dispute or difference arises in connection with any Contract (other than any dispute relating to sums due to Selwood) Selwood and the Customer will, unless it has been resolved between them within 14 days of the dispute arising, attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties the mediator will be nominated by CEDR.

## 17. Governing Law

The governing law of all Contracts is English law and any dispute shall be referred to the English Courts.

## SECTION 1

### ADDITIONAL TERMS APPLICABLE ONLY TO HIRE OF PLANT, PUMPS, EQUIPMENT AND ACCESSORIES

These additional terms are supplemental to Selwood Terms & Conditions of Trade and this Section shall only apply to any Contract for the hire of Goods.

The Construction Plant-hire Association Model Conditions for the Hiring of Plant (effective from July 2011) and any subsequent amendment ("CPA terms") shall apply to all Contracts of hire except that the first and second sentence of clause 2 of the CPA terms shall be deemed deleted.

If there is a conflict between the Selwood Terms and Conditions of Trade (including these additional terms) and the CPA terms, the Selwood Terms and Conditions of Trade (including these additional terms) shall prevail and apply.

All Goods are offered for hire subject to availability at the time required.

## 1. Title, Risk and Insurance

The provisions of this sub-section 1 shall apply notwithstanding any other provision of the CPA terms.

The Goods shall at all times remain the property of Selwood, and the Customer shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to the terms of the Contract).

The risk of loss, theft, damage or destruction of the Goods shall pass to the Customer on delivery of the Goods to the Customer at the site. The Goods shall remain at the sole risk of the Customer during the period commencing with the passing of risk to the Customer until the Goods are collected by Selwood ("**Risk Period**"). During the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (i) insurance of the Goods to a value not less than their full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Selwood may from time to time nominate in writing;
- (ii) insurance for such amounts as a prudent owner or operator of the Goods would insure for, or such amount as Selwood may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Goods (including without limitation death, personal injury and damage to property); and
- (iii) insurance against such other or further risks relating to the Goods as may be required by law, together with such other insurance as Selwood may from time to time consider reasonably necessary and advise to the Customer.

All insurance policies procured by the Customer shall be endorsed to provide Selwood with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall name Selwood on the policies as a loss payee in relation to any claim relating to the Goods. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

The Customer shall give immediate written notice to Selwood and their insurers in the event of any loss, accident or damage to the Goods or arising out of or in connection with the Customer's possession or use of the Goods.

If the Customer fails to effect or maintain any of the insurances required under the Contract, Selwood shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Selwood and proof of premium payment to Selwood to confirm the insurance arrangements.

In the event of any loss, theft, damage (excluding fair wear and tear) or destruction of the Goods during or attributable to the Risk Period howsoever caused and whether discovered by Selwood during and / or after the Risk Period, the Customer shall be responsible for paying to Selwood the replacement value of Goods (or, if in Selwood's opinion it is economical to repair any damaged Goods the full costs of repair including without limitation all parts and labour costs). Invoices for loss of or damage to Goods supplied shall be payable within 14 days of invoice date unless otherwise agreed.

## 2. Customer's Responsibility for Operators

It is the Customer's sole responsibility to ensure that operators of Goods are competent to use the Goods for the purpose for which they are designed under Regulation 9 - Training, of The Provision and Use of Work Equipment Regulations 1998 (PUWER) which are made under the provisions of The Health & Safety at Work Act 1974

and are familiar with the operation of the specific piece of equipment hired as the Goods. The Customer shall indemnify Selwood for any injury, loss or damage caused directly or indirectly by an operator's lack of training, knowledge, skill or familiarisation in respect of the Goods. The Customer is further responsible for ensuring that all Goods are operated in accordance with manufacturer's recommendations and all applicable rules and regulations.

## 3. Contaminants

The Customer shall comply with its obligations under The Environmental Protection Act 1990 and take all reasonable precautions and exercise all due diligence to ensure that no controlled waste or polluting substance remains in or on the Goods at the time of collection by Selwood on completion of the hire and Selwood reserves the right to raise additional charges to the Customer where cleaning is necessary.

## 4. Dispute Resolution

Any dispute regarding the hire of any Goods supplied which are operated off shore or overseas, shall be subject to the terms of, and resolution in accordance with, Clause 35 of the CPA terms.

## 5. Telemetry

Subject to Clause 11 of Selwood Terms & Conditions of Trade, Selwood undertakes to use its best endeavours to ensure that any telemetry unit affixed to any Goods will perform in accordance with the instructions agreed with the Customer. However, Selwood accepts no liability nor responsibility for any loss or damage due to inherent failure of any electronic component, nor transmission of signals due to local conditions, vandalism or interference by natural conditions.

## 6. Collection of Goods

The provisions of this sub-section 6 shall apply notwithstanding any other provision of the CPA terms.

The Customer shall make the Goods available for collection by Selwood during Business Hours for a period of 10 Business Days from and including:

- (i) where the hire is for a defined period, the end of the defined period or such earlier date if agreed;
- (ii) where the hire is for an indeterminate period or having been for a defined period becomes indeterminate, the date of expiry of the notice to terminate the Contract;

(such period being the "**Collection Period**").

If during the Collection Period, the Goods are not available for collection when Selwood attempts to collect the Goods, then the Goods shall for the purposes of charging only be deemed to be placed back on hire from and including the date of attempted collection. The Customer shall then make the Goods available for collection by Selwood during Business Hours for 10 Business Days from and including the date of attempted collection. If the Goods are still not available for collection when Selwood attempts to collect the Goods during this further period then the Goods shall remain on hire for the purposes of charging only until the Customer makes the Goods available for collection by Selwood during Business Hours on a Business Day.

If the Goods are not made available for collection by Selwood during Business Hours before the end of 20 Business Days following the expiry of the Collection Period then Selwood shall be entitled to charge the Customer for:

- (i) the replacement value of the Goods;
- (ii) all reasonable costs (including without limitation all legal costs and expenses) and expenses incurred by Selwood in seeking to collect the Goods; and

(iii) all losses, liabilities, claims, costs and / or expenses suffered by Selwood as a result of the Goods not being available for collection (including without limitation the cost of Selwood obtaining substitute goods to fulfill its contractual obligations);

which shall be payable within 14 days of invoice date unless otherwise agreed.

With effect from the commencement of the Collection Period and until the Goods have been collected by Selwood, the Customer shall not part with possession, use or operate the Goods nor permit any other person to do the same.

For the avoidance of doubt, the Goods shall remain at the sole risk of the Customer until the Goods are collected by Selwood.

## 7. Undertaking

The Customer undertakes that the Goods will:-

- (i) Not be used in any conditions where they will be in contact with any hazardous or corrosive materials, and will return the Goods in a clean condition at the end of the period of hire.
- (ii) Unless agreed by Selwood in writing, only be used within the United Kingdom and will not be operated off shore.
- (iii) Not be modified in any manner without prior agreement in writing from Selwood, and the Customer acknowledges that, in the event that any unauthorised modifications invalidate any manufacturer's warranty, the Customer will reimburse in full any costs incurred in returning the Goods to their original manufactured state.

## SECTION 2

### ADDITIONAL TERMS APPLICABLE ONLY TO SALE OF PLANT, PUMPS, EQUIPMENT, PARTS AND ANCILLIARY PRODUCTS

These terms are supplemental to Selwood Terms & Conditions of Trade and this Section shall only apply to any Contract for the sale of Goods.

#### 1. Formation of Contract

All orders for the purchase of Goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to Selwood Terms & Conditions of Trade and these Supplementary Conditions.

The Customer's acceptance of delivery of the Goods shall also be deemed conclusive evidence of the Customer's acceptance of Selwood Terms & Conditions of Trade and these Supplementary Conditions.

#### 2. Price

The Goods shall be sold at the prices applicable at the date of delivery where there is no valid quotation and / or estimate in respect of those Goods.

If the Customer terminates the Contract for supply of Goods prior to delivery a cancellation charge of 50% of the agreed price shall be payable within 30 days of termination as a contribution to the losses and costs suffered by Selwood as a result.

#### 3. Delivery

Unless otherwise agreed in writing, the delivery of Goods by Selwood does not include the provision of labour and equipment for unloading, which the Customer shall be liable to provide, at the Customer's own cost.

The point of delivery shall be identified in the Customer's Order and in Selwood's acknowledgement of order. Where delivery is within England, Wales and Scotland this shall be by post, carrier, Selwood's transport or by Customer collection. Where Goods are exported, delivery will normally be ex-works, unless otherwise specified in the acknowledgement of the order.

## 4. Non-Delivery and Damage in Transit

Selwood will only be liable for claims for non-delivery, shortage in delivery and damage in transit only if the Customer observes whichever of the following procedures is appropriate:-

- (i) Non Delivery – to be notified in writing to both Selwood and the carrier within 14 days of the date of despatch as advised by Selwood.
- (ii) Short delivery and damage in transit – to be notified in writing to both Selwood and the carrier within 3 days of receipt of the Goods, followed by a detailed claim to be made both against Selwood and against the carrier within 14 days of the date of Selwood's advice of despatch.
- (iii) Where the Customer has arranged insurance of the Goods during delivery it must also advise its insurer of any loss or damage.

## 5. Export Contracts

- (i) Payment by the Customer shall be made in London by irrevocable commercial credit confirmed by a bank approved by Selwood.
- (ii) Where payment is made other than in GB£ sterling the rate of exchange to be applied to the invoiced contract price shall be that ruling on the day the payment is made.
- (iii) All taxes consular and bank charges import and customs duties and charges arising out of the Contract shall be for the account of the Customer.
- (iv) The Customer shall obtain all necessary import licences and promptly inform Selwood of the terms.
- (v) The delivery period shall not commence until Selwood is satisfied that all necessary import licences have been granted to the Customer and that adequate security for the payment of the Contract price has been established.
- (vi) The Customer shall examine the Goods within three working days of taking physical delivery. Claims of shortage and non delivery shall be submitted to Selwood within three working days after the anticipated delivery date and confirmed in writing within 14 days.

## 6. Passing of Property and Risk

The risk in Goods supplied by Selwood shall pass to the Customer on delivery of the Goods.

Whether or not the risk in Goods sold shall have passed to the Customer, the property in Goods sold shall be and remain in Selwood until Selwood has received payment in full for them together with payment in full for any other Goods supplied by Selwood to the Customer. Pending receipt by Selwood of such payments, the Customer shall hold the Goods for Selwood as fiduciary bailee.

When payment for the Goods is overdue or the Customer suffers distress or execution to be levied against his or its effects, makes an arrangement or composition with creditors or, being a corporate body, enters into liquidation (otherwise than for the purpose of amalgamating or reconstruction where the corporate body, as amalgamated, accepts in full the Customer's liability of pay for the Goods), or has a receiver or administrator appointed for the whole or any part of its undertaking or, being an individual, has a bankruptcy order made against him, then:-

- (i) if the Customer remains in possession of the Goods, whether or not the Customer has sold them Selwood shall be entitled to recover the Goods from the Customer and for that purpose to enter into or upon any premises where the Goods may be or,
- (ii) if the Customer has parted with possession of the Goods by way of sale, whether or not the Goods have been mixed with or incorporated into other Goods, the Customer having sold them as fiduciary bailee, shall hold in trust for Selwood so much of the

proceeds of sale of the Goods as represents the Customer's liability to Selwood in respect of them.

## **SECTION 3**

### **ADDITIONAL TERMS APPLICABLE ONLY TO ANY SERVICES PROVIDED**

These terms are supplemental to Selwood Terms & Conditions of Trade and this Section shall only apply to any Contract where Selwood is obliged to provide services.

#### **1. Services to be Supplied**

The nature and extent of the services to be provided by Selwood shall be either:-

- (i) specified on the quotation and / or estimate for the Goods and confirmed in the acknowledgement of the order, or
- (ii) separately specified and agreed in writing between Selwood and the Customer (the "Specified Services").

Services for the installation of Goods including mechanical, electrical and ancillary work for the installation of pumps or plant shall be in accordance with a written method statement and risk assessment provided by either Selwood and agreed with the Customer, or provided by the Customer and agreed with Selwood.

Other Specified Services including the servicing and repair of Goods shall be provided in accordance with the details agreed in writing between Selwood and the Customer or in accordance with Selwood's brochure or its other publications current at the time of performance applicable to the Specified Services.

The Customer shall at its own expense supply Selwood with all necessary information or other materials within sufficient time to allow Selwood to provide the Specified Services and the Customer shall be responsible for the accuracy of such information.

#### **2. Insurance**

Where the Customer delivers plant or equipment to Selwood for the performance of the Specified Services the Customer shall remain liable for all insurance risks in relation thereto and shall indemnify Selwood against any claim for loss or damage to the plant or equipment whilst it is in the custody of Selwood.

#### **3. Charges**

The Customer shall pay the charges in respect of the Specified Services in accordance with Selwood Terms & Conditions of Trade and these Supplementary Conditions and any additional sums which in Selwood's sole discretion are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any information supplied by the Customer or any other cause attributable to the Customer.

#### **4. Warranty**

Selwood warrants to the Customer that the Specified Services will be provided using reasonable care and skill. Defects in the Specified Services which appear within a period of 30 days after the date the Specified Services have been completed and which are shown to be due to lack of such reasonable care and skill, will be made good at Selwood's expense, provided that each defect has been notified to Selwood within 7 days of its having become apparent.

The Selwood express warranty set out above is given in lieu of and excludes all other warranties, guarantees and assurances whether express or implied, statutory or otherwise relating to the standard of the Specified Services.

## **SECTION 4**

### **ADDITIONAL TERMS APPLICABLE ONLY TO TERM HIRE OF PLANT, PUMPS, EQUIPMENT AND ACCESSORIES**

These additional terms shall apply to all Contracts for the Term Hire of Goods for an agreed hire period of 52 weeks; 104 weeks; or 156 weeks, or any intermediate period agreed at the commencement of the Term Hire period, ("Term Hire") and these additional terms shall be supplemental to Selwood Terms & Conditions of Trade and Section 1 hereof.

If there is a conflict between the Selwood Terms and Conditions of Trade (including Section 1 hereof and these additional terms), and the CPA terms, the Selwood Terms and Conditions of Trade (including Section 1 hereof and these additional terms) shall prevail and apply.

All Goods are offered for Term Hire subject to availability at the time required.

#### **1. Hire Rate**

Selwood and the Customer agree that notwithstanding the provisions of Clause 2 of Selwood Terms and Conditions of Trade the Term Hire rate agreed as the Price shall be payable without amendment throughout the Term Hire period and no further allowance shall be made in respect of holidays, theft or loss of equipment or any other reason. Should the Customer give notice under clause 3 hereof that they wish to retain the Goods after the end of the agreed Term Hire period Selwood retain the right to review and increase the Term Hire rate payable.

#### **2. Payment**

Subject to Clause 3 of Selwood Terms and Conditions of Trade, payment shall be by banker's standing order on the 15<sup>th</sup> of each month following the month of hire. Selwood will issue invoices monthly indicating the Customers order number or contract number for record purposes.

#### **3. Termination**

The Term Hire period shall cease on the date agreed at the commencement of the Term Hire. However, if the Customer wishes to continue the Term Hire after that date it must give Selwood at least 4 weeks' notice prior to the expiry date of its requirements. Notice should be given to the Selwood branch providing support and maintenance of the Goods during the Term Hire period and confirmed in writing to the Hire Fleet Asset Manager at Selwood Ltd. Bournemouth Road, Chandler's Ford, Eastleigh, Hampshire SO53 3ZL. Selwood shall be under no obligation to agree any request for any extension of the Term Hire period and any such extension shall only become effective when confirmed in writing by Selwood.

#### **4. Early Termination**

If the Customer wishes to terminate the Term Hire before the agreed termination date, the Customer must pay a balancing payment, equal to the amount due for hire between the actual termination date and the end of the agreed Term Hire period.

#### **5. Hours of Use**

The Term Hire is entered into on the understanding that the Goods will only be operated for a maximum of 2080 hours per annum, and all hours of operation in excess of this figure will be charged at the pro rata hourly rate.

#### **6. Servicing and Repair**

The Customer will advise Selwood at the end of each month of the number of hours worked as shown on the meter, when installed into the item of plant concerned, which will enable Selwood to arrange regular servicing in accordance with manufacturer's recommendations.

Subject to Clause 6 of the CPA terms (allowing Selwood access at all reasonable times), any routine servicing and maintenance will be carried out by Selwood at such intervals specified by Selwood.

## 7. Undertaking

The Customer undertakes that the Goods will:-

- (i) Not be used in any conditions where they will be in contact with any hazardous or corrosive materials and will return the Goods in a clean condition at the end of the Term Hire period, and will at all times comply with Clauses 3 and 4 of Section 1 hereof.
- (ii) Unless agreed by Selwood in writing, only be used within the United Kingdom and will not be operated off-shore.
- (iii) Not be modified in any manner without prior agreement in writing from Selwood, and the Customer acknowledges that, in the event that any unauthorised modifications invalidate any manufacturer's warranty, the Customer will reimburse in full any costs incurred in returning the Goods to their original manufactured state. Any replacement Goods provided to the Customer whilst remedial works are undertaken will be provided under a separate Contract at Selwood's normal commercial hire rates.

## 8. Title, Risk and Insurance

The provisions of this sub-section 8 shall apply notwithstanding any other provision of the CPA terms.

The Goods shall at all times remain the property of Selwood, and the Customer shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to the terms of the Contract).

The risk of loss, theft, damage or destruction of the Goods shall pass to the Customer on delivery of the Goods to the Customer at the site. The Goods shall remain at the sole risk of the Customer during the period commencing with the passing of risk to the Customer until the Goods are collected by Selwood ("**Risk Period**"). During the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (i) insurance of the Goods to a value not less than their full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Selwood may from time to time nominate in writing;
- (ii) insurance for such amounts as a prudent owner or operator of the Goods would insure for, or such amount as Selwood may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Goods (including without limitation death, personal injury and damage to property); and
- (iii) insurance against such other or further risks relating to the Goods as may be required by law, together with such other insurance as Selwood may from time to time consider reasonably necessary and advise to the Customer.

All insurance policies procured by the Customer shall be endorsed to provide Selwood with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall name Selwood on the policies as a loss payee in relation to any claim relating to the Goods. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

The Customer shall give immediate written notice to Selwood and their insurers in the event of any loss, accident or damage to the Goods or arising out of or in connection with the Customer's possession or use of the Goods.

If the Customer fails to effect or maintain any of the insurances required under the Contract, Selwood shall be entitled to effect and maintain the same, pay such premiums as may be necessary for

that purpose and recover the same as a debt due from the Customer.

The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Selwood and proof of premium payment to Selwood to confirm the insurance arrangements.

In the event of any loss, theft, damage (excluding fair wear and tear) or destruction of the Goods during or attributable to the Risk Period howsoever caused and whether discovered by Selwood during and / or after the Risk Period, the Customer shall be responsible for paying to Selwood the replacement value of Goods (or, if in Selwood's opinion, it is economical to repair any damaged Goods, the full costs of repair including without limitation all parts and labour costs). Invoices for loss of or damage to Goods supplied shall be payable within 14 days of invoice date unless otherwise agreed.

## 9. Collection of Goods

The provisions of this sub-section 9 shall apply notwithstanding any other provision of the CPA terms.

The Customer shall make the Goods available for collection by Selwood during Business Hours for a period of 10 Business Days from and including:

- (i) the expiry of the Term Hire period or such earlier date if agreed;
- (ii) if the Term Hire period is extended and / or becomes indeterminate, the date of expiry of the notice to terminate the Contract;

(such period being the "**Collection Period**").

If during the Collection Period, the Goods are not available for collection when Selwood attempts to collect the Goods, then the Goods shall for the purposes of charging only be deemed to be placed back on hire from and including the date of attempted collection. The Customer shall then make the Goods available for collection by Selwood during Business Hours for 10 Business Days from and including the date of attempted collection. If the Goods are still not available for collection when Selwood attempts to collect the Goods during this further period then the Goods shall remain on hire for the purposes of charging only until the Customer makes the Goods available for collection by Selwood during Business Hours on a Business Day.

If the Goods are not made available for collection by Selwood during Business Hours before the end of 20 Business Days following the expiry of the Collection Period then Selwood shall be entitled to charge the Customer for:

- (i) the replacement value of the Goods;
- (ii) all reasonable costs (including without limitation all legal costs and expenses) and expenses incurred by Selwood in seeking to collect the Goods; and
- (iii) all losses, liabilities, claims, costs and / or expenses suffered by Selwood as a result of the Goods not being available for collection (including without limitation the cost of Selwood obtaining substitute goods to fulfill its contractual obligations);

which shall be payable within 14 days of invoice date unless otherwise agreed.

With effect from the commencement of the Collection Period and until the Goods have been collected by Selwood, the Customer shall not part with possession, use or operate the Goods nor permit any other person to do the same.

For the avoidance of doubt, the Goods shall remain at the sole risk of the Customer until the Goods are collected by Selwood.

# MODEL CONDITIONS FOR THE HIRING OF PLANT (With effect from October 2021)

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 when either 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 any time the Plant is being transported to or from site; or is left on site during evenings, nights, weekends, or any 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, welfare units, accommodation, vehicles, or equipment therefor, which the Owner agrees to hire to the Hirer including any personnel, 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 or any personnel supplied by the Owner 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 to the site, and where applicable any access road to the site and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site or on the access road; 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 written notification is received by the Owner within 24 hours from the commencement of the Hire from the Hirer, 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 themselves 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, the Owner's agents, or insurers to have access to the Plant to inspect, test, adjust, repair, or replace the same. The Hirer shall allow such access during the Working Day. The Owner reserves the right

to charge the Hirer for any inspection or maintenance work carried out on the Plant during the Hire Period.

## 7. GROUND AND SITE CONDITIONS

- The Hirer is deemed to have knowledge of the site, the site's access road, the property or land where the Plant is to be delivered or collected, loaded or unloaded, to work on, travel over, be transported over, be erected or dismantled on is suitable for the use of such Plant, and any electronic interference which may affect the Plant.
- Subject to 7(a), if, in the opinion of the Hirer, the ground (including any private access road or track) is soft or unsuitable for the Plant, then the Hirer shall supply and lay suitable support in a suitable position for the Plant.
- Any suitable support supplied by the Owner is provided solely to assist the Hirer under their duties within clause 7(b) and expressly not to relieve the Hirer of their 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 site costs and 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 repair, modify, or alter the Plant without the prior written permission of the Owner (including without limitation the changing or repair of any tyre/puncture). 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 their 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 during causes outside the Owner's control, including but not limited to adverse 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.

## 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):

- The Owner shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond the Owner's 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) be liable for all loss of or damage to the Plant, 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) For the avoidance of doubt, notwithstanding any agreement by the Owner to waive hire charges after any agreed period of use of the Plant, the Hirer's obligations specified under clause 13(b) shall continue for the duration of the Hire Period.
- (d) Notwithstanding the above the Hirer shall not be responsible for damage, loss, or injury, subject to clauses 1(b) and 7:
  - (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 physically erected/dismantled on site, provided always that such erection/dismantling is under the exclusive control of the Owner or their agent,
  - (iii) after the Plant has safely been removed from the site, and until it 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 including the site's access road, after it has safely joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer)
  - (iv) where the Plant is travelling to or from a site on a highway maintainable at the public expense including the site's access road, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer).

### 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 the Owner may arrange for such repairs to be carried out on site or at any location of the Owner's 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 the Owner 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. Where applicable, the Plant's telematics may be checked against the Hirer's statement or operator's signed timesheet, should any conflict arise, then the telematics will take precedence over all other records. (If there is any conflict between the signed timesheet and any other record taken, then the signed timesheet takes precedence.)
- (b) The Hirer shall be charged for any toolbox talks, briefings, inductions, mandatory training which the Owner's personnel have to attend prior to or when working on the Hirer's site.
- (c) 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.
- (d) Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The Hirer shall pay the Owner's invoice within 30 days net unless otherwise agreed.
- (i) Any query with the Owner's invoice must be raised in writing by the Hirer within 14 calendar days of receiving the invoice.
- (j) The Owner in their absolute discretion may agree to accept electronic records and data as an alternative to written statements of the number of hours, time record sheets and other information related to charging that the Hirer is required to provide to the Owner. Such electronic records and data may include but is not limited to telematics automatically generated by the plant and electronic log books.

### 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 at the Hirer's request, the Plant is actually worked or has been delivered to site or is on standby. The Hirer must inform the Owner if the Plant is going to be used at these times.

### 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 MONTH WITH QUALIFICATION AS TO HOURS

The full hire for the period in the Contract will be charged as per the Working Day or Working Week and an additional pro rata charge will be made for hours worked in excess of such period. An allowance will be made for breakdowns for up to the entirety of that Working Day providing always that where the actual hours worked are in excess of the breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. An allowance may be made for any Holiday Period that falls within the Working Day or Working Week, provided that the Plant is not available for the Hirer to use during that time.

### 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. PERIOD OF CHARGING

- (a) Within the Hire Period, an allowance may be made of not more than 1 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 1 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) Should the Hirer delay the commencement of the Hire Period for whatever reason, then the Owner reserves the right to charge the Hirer the idle time rate as defined in clause 25 for the intervening period
- (c) 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.
- (d) 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 bowsers. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner should the Hirer fail to comply with this clause.

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

- a) Where the intended duration of the hire of the Plant is indeterminate or having been defined becomes indeterminate the Contract shall be terminable by 7 working 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 working 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 working 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 working days' notice, the Hirer's obligations under clause 13 shall continue for a further 3 working 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.
- d) Should the Hirer terminate the Contract once the Hire Period has commenced, the Owner reserves the right to charge the Hirer the balance of the Contract. Where the Hire Period has not commenced but insufficient notice of cancellation is provided by the Hirer to allow the Owner to mitigate the effects of late cancellation, the Owner reserves the right (at its absolute discretion) to charge the Hirer the full balance of the charges for the Hire Period.
- e) The Hirer may off-hire the Plant by written notification via an electronic device or application (app.). This off-hire will only be accepted by the Owner, provided the Owner issues an off-hire confirmation to the Hirer.

## 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(f). 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 their home may 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 POWER

- (a) Fuel, fuel additives or power shall when supplied by the Hirer and where instructed or specified by the Owner, be of a grade and type specified. The Hirer shall be solely responsible for all damages, losses, costs, and expenses incurred by the Owner if the Hirer fails to supply, maintain, or use the wrong/contaminated fuel, fuel additives or power rating. Fuel, fuel additives or power when supplied by the Owner, to be charged at an agreed cost.
- (b) If the Plant requires an electrical supply to either safely operate or recharge, then the Hirer will be responsible for the cost of providing the correct electrical supply, which will be available prior to the Plant's delivery, and continue until the Plant has left the site. The Hirer shall ensure that all current Health and Safety and other applicable legislation and industry guidance is complied with including fitting, testing and inspection of the supply. The Hirer will indemnify the Owner against any and all damages, losses, or claims should the Hirer fail to do so.

## 29. SHARPENING OF DRILLS/STEELS ETC.

The cost of re-sharpening or replacement of drill bits, blades, bucket teeth 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 the Hirer's 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 all relevant legislation, regulations, instructions, or guidance issued by the Government, Government Agencies, Local Authorities, statutory regulators, and Public/Corporate Bodies established by Parliament/Government including (without limitation) regulations under the Bribery Act, the Civil Aviation Act, the Construction (Design and Management) Regulations, the Environmental Acts, Factories Acts, the General Data Protection Regulation (GDPR), the 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) For the avoidance of doubt, the Hirer shall indemnify the Owner against any and all charges, fines, or losses that the Owner may become liable for as a result of the Hirer utilising the Plant during the Hire Period.

## 33. PROTECTION OF OWNER'S RIGHTS

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.

## 34. TERMINATION AND SUSPENSION

- (a) 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 and fails to remedy such default within 10 working days or such other period as might be considered reasonable under the circumstances upon receiving written notice requiring it to do so;
  - (ii) The Hirer fails to observe and perform the terms and conditions of the Contract and fails to remedy such default within 10 working days of receiving written notice requiring it to do so;
  - (iii) The Hirer suffers, or the Owner reasonably believes that the Hirer shall suffer, any distress or execution to be levied against them;
  - (iv) The Hirer makes or proposes to make any arrangement with their 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.
- (b) In the event of termination under sub-paragraph (a) above:
  - (i) The Hirer must give the Owner or the Owner's 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.
- (c) The rights under sub-paragraph (a) and (b) 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.
- (d) 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 working 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.

## 35. 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(d) and (e), 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.

## 36. DISPUTE RESOLUTION

- (a) The Owner will determine which court will have exclusive jurisdiction and interpretation of the law for this Contract be it governed by the country where the Owner's Head Office or site 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 such equivalent legislation which confers on the parties the statutory right to adjudicate within the relevant jurisdiction (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.

## 37. 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.

## 38. 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.