

All Oceans Engineering Limited

Terms & Conditions of Hire

1 DEFINITIONS

- a) The 'Company' is All Oceans Engineering Limited and includes its successors or assignees.
- b) The 'Hirer' is the company, firm or person, or Corporation or public authority taking the Company's plant on hire and includes their successors and personal representatives and employees.
- c) 'Plant' covers all classes of Plant, machinery, equipment and accessories therefore which the Company agrees to hire to the Hirer.

2 RESPONSIBILITIES OF HIRER

- a) The Hirer undertakes to accept full responsibility for loss or damage to the Plant from whatever cause this may arise, fair wear and tear excepted, and shall also fully and completely indemnify the Company in respect of all claims, costs, losses and expenses suffered by the Company or by any person whatsoever for injury to person or property caused by or in connection with or arising out of the use of the Plant and in respect of all costs and charges in connection therewith, whether arising under statute or common law. The Company shall have no liability, obligation or duty to the Hirer in contract, tort, statute or otherwise. The Hirer will be responsible to the full replacement cost at the current manufacturers published list price of items lost, stolen or damaged beyond repair and for full repair costs, including parts, labour and overhead element, on items damaged. This condition must be met by the Hirer notwithstanding any insurance claim which may be pending. Standing-time hire charges at full rate will be made at the discretion of the Company in any instances where, in the opinion of the Company, an unreasonable amount of time is taken to settle a claim for lost equipment.
- b) The Hirer should cover by insurance the indemnity given to the Company in Clause 2 a). The interest of the Company in the Plant shall be noted on the policy and in the event of loss or damage to the Plant shall be payable direct to the Company as loss payee, the Hirer authorising the Company to give good and valid receipt in respect of such policy monies accordingly.

3 DELIVERY IN GOOD ORDER

- a) The Hirer must satisfy himself that the Plant is in good working order and that the Plant is not damaged in any way before signing the delivery note, and the Hirer acknowledges that the Company relies on the Hirer to inspect the Plant immediately after delivery and to ensure that it is of satisfactory quality and fit for its purpose.
- b) Any time estimated for delivery is approximate only and the Company shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Plant (even if caused by the Company's negligence).
- c) The Hirer shall be responsible for loading and/or unloading the Plant on site and for the provision of any lifting facilities required for loading and/or unloading on site.
- d) Copies of test certificates, where applicable are available for all items. These can be supplied to the Hirer on request.

4 COMMENCEMENT AND TERMINATION OF HIRE, BASIS OF CHARGING

- a) The Plant shall be determined to be on hire from such time as it is delivered to the Hirer until such time as it is collected from the Hirer. Should the Hirer arrange transit to and from the Company's premises then the Plant shall be deemed to be on hire from the time of leaving the Company's premises to the time of being returned and off-loaded at the Company's premises. All the time shall be chargeable including Saturdays, Sundays and Bank Holidays. Customers indicating a fixed period of hire, either verbally or in writing, must still confirm the termination of hire by telephone prior to the proposed termination, otherwise the hire period will be deemed to continue until the Plant is collected or returned.
- b) The Company cannot accept any responsibility nor reduce any Hire charges because of strikes (whether involving the workforce of the Company or any other workforce), bad weather conditions or any other cause outside the direct control of the Company.
- c) Except where otherwise stated and confirmed in writing by the Company all Plant is hired on a one week minimum basis. Thereafter a daily charge is made at one seventh of any quoted weekly rate. Both the first and the last day are inclusive.
- d) Invoices are rendered monthly and on the termination of hire. The sums payable under these conditions are exclusive and shall be paid together with Value Added Tax where applicable at the rates at the time being in force.
- e) The hirer shall pay to the Company in respect to the Hire of the Plant the rental charges specified by the Company. All prices are valid for 30 days from the date of quotation or until earlier acceptance by the Hirer, after which time they may be altered by the Company without giving notice to the Hirer.
- f) All deliveries and collections made by the Company or at the Company's cost will be charged extra for each separate occasion on a distance or time basis.

5 MAINTENANCE AND SAFE USE OF PLANT

- a) The Hirer shall be responsible for the safe-keeping, maintenance, use in a workmanlike manner within the manufacturer's rated capacity and return on the completion of the hire in equal order (fair wear and tear accepted), of all Plant on hire.
- b) The Hirer shall be responsible for compliance with all laws and regulations applicable to the Plant and to the work being performed by the Plant.
- c) The Hirer shall ensure that any instructions, guidance or training in the safe use of the Plant made available by the Company is directed to the operator of the Plant.
- d) The Hirer shall take all reasonable steps to keep himself acquainted with the state and conditions of the Plant. If the Plant be continued at work or in an unsafe and unsatisfactory state the Hirer shall be solely responsible for any damage, loss, charges, expenses or accidents whether directly or indirectly arising therefrom.
- e) The Hirer shall regularly clean the Plant and return it in a clean condition. The Hirer shall be responsible for any expense involved in cleaning the Plant incurred by the Company. The Company shall notify the Hirer of the cost of cleaning the Plant and the Hirer shall reimburse the Company forthwith.
- f) The Hirer shall notify the Company of, and is responsible for making good, any damage or loss to the Plant which may occur for any reason whatsoever.

6 LOSS OR BREAKDOWN

- a) Any loss, breakdown or the unsatisfactory working of any part or any whole of the Plant must be notified to the Company immediately and confirmed in writing.
- b) Under no circumstances shall the Hirer repair or attempt to repair the Plant unless authorised in writing by the Company.

7 CONSEQUENTIAL LOSSES

- a) All warranties conditions or other terms implied by statute or by common law are excluded from these conditions.
- b) The Company shall not be liable to the Hirer for any consequential loss (including loss of profit, loss of business or pure economic loss), costs, damages, charges or expenses arising out of the delivery, non delivery, loading, unloading, transport, supply or use of the Plant (even if caused by the Company's negligence). However, if a court rules that the Company is liable for any type of consequential loss, which is not excluded by this clause, or which is deemed to be direct loss as opposed to a consequential loss, the Company's liability for the same shall not exceed the amount (if any) paid to it for any claim under its insurance policy covering such risks; and in the event that the insurance policy does not cover such risks, the liability is limited to the value of the goods and/or services supplied, which caused the loss in question.
- c) Notwithstanding anything to the contrary herein contained the Company's liability to the Hirer for:
 - i) death or personal injury resulting from the negligence of the Company, its employees, agents or subcontractors;
 - ii) damage suffered by the Hirer as a result of a breach by the Company of the conditions as to the title or the warranty as to quiet possession implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; or
 - iii) fraudulent misrepresentation shall not be limited save that nothing in this clause 7 c) shall confer a right or remedy upon the Hirer to which the Hirer would not otherwise be entitled.
- d) The Company's charges to the Hirer are determined on the basis of the exclusions from and limitations of liability contained in these conditions. The Hirer expressly agrees that these exclusions and limitations are reasonable because of amongst other matters the likelihood that the amount of damages awardable to the Hirer for a breach by the Company of these conditions may be disproportionately greater than the cost of the hire of the Plant by the Hirer.

8 NOTICE OF ACCIDENTS

- If the Plant is involved in any accident resulting in injury to persons or damage or property, immediate notice must be given to the Company and confirmed in writing to the Company's registered office, and in respect of any claim. The Hirer shall at all times disclose in writing to the Company all information and documents relating to the potential claim and if requested by the Company shall give the Company and its advisors access to the personnel of the Hirer and to any records, documents, premises or chattels within the power, possession or control of the Hirer to enable the Company and/or its advisors to interview such personnel and to examine such claim, chattels, documents and records and to take copies or photographs of them. The Hirer shall take such action as the Company may require to avoid resist or compromise any claim or potential claim. Nothing in these conditions shall diminish the Hirer's duty to mitigate its loss. No admission, offer, promise of payment or indemnity shall be made by the Hirer without the Company's consent in writing.

9 SUB-LETTING

- The Hirer shall not sub-let, lend, assign or charge the Plant or any part thereof to any third party nor allow the Plant to become a fixture on any land or property without first receiving the written permission of the Company. The Plant shall at all times remain in the ownership of the Company and the Hirer will have no rights in the Plant other than as a loss bailee. The Company may however assign and sell its rights under these conditions and its rights in and to the Plant.

10 PROTECTION OF COMPANY'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 9 and shall protect the same against distress, execution or seizure and shall indemnify the Company against all losses, damage, costs, charges and expenses that may be occasioned by any failure to observe and perform this condition, except in the event of government requisition.
- b) The Company shall be entitled to terminate the contract (without any notice or other act on the part of the Company and notwithstanding that the Company may have waived some previous default or matter of the same or like nature), upon the happening of any one of the following events:
 - i) If the Hirer make default in punctual payment of all sums due to the Company for hire of Plant or other charges or shall fail to observe and perform these terms and conditions.
 - ii) If the Hirer shall suffer any distress or execution to be levied against him or make or propose to make any arrangements with his creditors or has had bankruptcy order made against him, has been the subject of an application for an interim order under section 253 Insolvency Act 1986 or has had an interim receiver of his property appointed under section 286 Insolvency Act 1986, or being a company shall become the subject of a voluntary arrangement under section 1 Insolvency Act 1986.
 - iii) Be unable to pay its debts within the meaning of section 123 Insolvency Act 1986.
 - iv) Have a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, have passed a resolution for its winding up or have a petition presented to any court for its winding up or for an administration order.
 - v) Has ceased or threatened to cease to trade.
 - vi) Shall do or shall cause to be done or permit or suffer any act or thing whereby the Company's rights in the Plant may be prejudiced or put in jeopardy. It shall thereupon be lawful for the Company to retake possession of the said Plant and for that purpose enter into or upon any premises where the same may be and the determination of the hiring under this clause shall not affect the right of the Company's to recover from the Hirer any monies due to the Company under the contract of damages for the breach thereof.

11 FORCE MAJEURE

- a) The Company shall not be liable to the Hirer in any manner (subject to clause 7) or be deemed to be in breach of those conditions because of any delay in performing or any failure to perform any of the Company's obligations under the contract if the delay or failure was due to any cause beyond the Company's reasonable control.
- b) Without prejudice to the generality of clause 11 a) the following shall be included as clauses beyond the Company's reasonable control:
 - i) government actions, war, threat of war, riot, civil disturbance, sabotage or requisition;
 - ii) Act of God, fire, flood, epidemic or accident;
 - iii) import or export regulations or embargoes;
 - iv) labour disputes including disputes involving the Company's workforce or the workforce of any carrier or supplier of materials to the Company; or
 - v) inability to obtain or delay in obtaining supplies of adequate of suitable material, fuel, parts, machinery or labour.

12 TERMINATION OF CONTRACT

- Upon termination of the contract for whatever reason, the Hirer shall return the Plant to the address which the Company will specify and the Hirer shall pay to the Company by way of agreed damages:
 - a) all areas of rental and interest up to and including the date of termination;
 - b) all rentals which should have been paid for the remainder of the rental period less a discount at the rate of 5 per cent per annum for accelerated payment calculated from the date of payment until the date such payment would otherwise have been made; and
 - c) all other sums due from the Hirer to the Company under these conditions.

13 WAIVER

- a) The failure or delay by the Company in exercising any right, power or remedy of the Company under these conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by the Company of any right, power or remedy shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- b) The rights, powers or remedies provided in these conditions are cumulative and not exclusive of any rights, powers and remedies provided by the law.
- c) Any waiver or breach of, or default under, any of the terms of these conditions shall not be deemed a waiver of any breach or default and shall in no way affect the other terms of these conditions.

14 SCOTTISH LAW

- The formation, existence, construction, performance, validity and all aspect whatsoever of these conditions or of any terms of these conditions shall be governed by Scottish law. The Scottish courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with these conditions. The parties agree to submit to the jurisdiction.

15 ACCESS

- The Hirer shall permit the Company and its employees or agents access to the premises of the Hirer for the purpose of inspecting and monitoring the manner and performance of the Hirers obligations under these conditions.

16 GENERAL

- a) The terms contained in these conditions are to the exclusion of all other terms and conditions (including any terms and conditions which the Hirer purports to apply under any purchase order, confirmation of order, correspondence or similar document).
- b) All orders from the Hirer shall be deemed to be on offer by the Hirer to hire the Plant subject to the terms of these conditions.
- c) No terms or conditions endorsed upon, delivered with or contained in the Hirers order, specification or similar document will form part of these conditions simply as a result of a reference to such document in these conditions.
- d) Any variation to these conditions and any representation about the Plant shall have no effect unless it is expressly agreed in writing by the Company. This shall not exclude the Company's liability for any fraudulent representation. The Hirer must ensure that the terms of its order and any applicable specification are accurate, must notify the Company if the order or specification requires any unusual procedure to be carried out by the Company and must answer all questions reasonably put by the Company in relation to any order and any applicable specification.
- e) Payment becomes due 30 days from the date of the invoice.
- f) If payment is not made on the due date the Company shall have the right to charge interest on any amount outstanding at the rate of 3.0% over the prevailing Base Rate of Bank of Scotland for the time being in force, in the form of a separate Debit Note.
- g) Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds in its account.