

THE CONSTRUCTION PLANT-HIRE ASSOCIATION (CPA) HIRE CONTRACT TERMS AND CONDITIONS FOR CONSUMERS 2011 FOR PLANT AND EQUIPMENT SUPPLIED WITH AN OPERATOR

IMPORTANT NOTE TO OWNERS AND HIRERS OF PLANT AND EQUIPMENT:

These CPA Hire Contract Terms for Consumers are intended to apply to the hiring of Plant and Equipment supplied with an operator to individual consumers not acting in the course of any business. All these terms have been drawn up by the CPA and are recommended to CPA members and consumers as a comprehensive, fair and properly integrated set of hire terms appropriate for this type of equipment. Both the Owner and the Hirer should ensure that they are fully covered by insurance against the risks involved in the hire of the Plant and Equipment under these Terms and Conditions.

1. DEFINITIONS

In this Hire Agreement (the "Agreement"),

- 1.1 "Hire Charges" means all the charges, operator costs, Waiver Fee and other fees (as applicable) charged to you by us in respect of the hire of the Plant and Equipment.
- 1.2 "Operator" means the operator provided by us to you with the Plant and Equipment to operate the Plant and Equipment.
- 1.3 "Outstanding Balance" means all amounts payable under this Agreement less the amount paid.
- 1.4 "Plant and Equipment" means the plant and equipment hired to you by us, including any substitutions, replacements and additions made in accordance with the terms of this Agreement and any manuals, accessories or other items supplied with the Plant and Equipment.
- 1.5 "Site" means the location where the Plant and Equipment is intended to be used.
- 1.6 "Waiver Fee" means the fee to be paid by you in accordance with clause 5.2, if applicable.
- 1.7 "we", "us", "our" means the owner of the Plant and Equipment, its successors, its employees and agents, and any business or other person to whom the owner transfers (by absolute assignment, by way of novation or by way of security) any or all of its rights or its rights and responsibilities (whether legal or equitable) under the Agreement.
- 1.8 "you", "your" means the hirer (or hirers) of the Plant and Equipment.

2. MAXIMUM PERIOD OF HIRE

The term of this Agreement will not exceed three calendar months.

3. NON-BUSINESS HIRE

The Plant and Equipment is hired to you on the basis that it is used only for private or non-commercial use. You must not use the Plant and Equipment for commercial purposes.

4. LIABILITY

- 4.1 If either you or we are in breach of any term of this Agreement, neither of us will be responsible for any losses that the other suffers as a result except those losses, which are a foreseeable consequence of the breach.

- 4.2 You have agreed to hire the Plant and Equipment for domestic and non-commercial purposes only. In the circumstances, if we are in breach of this Agreement we will not be liable to you for any claim relating to business expenses or losses, including but not limited to claims for loss of profit.
- 4.3 If a third party makes a claim against us in relation to any loss or damage caused by the Plant and Equipment as a result of your breach of any term of this Agreement, you will indemnify us in full for all costs and/or losses suffered by us as result thereof including but not limited to payment of compensation (including interest where applicable) to the third party, our reasonable legal and other fees incurred as a result of any legal action resulting from the claim. You will not be responsible for such a claim to the extent that the loss or damage results from our negligence or breach of contract.
- 4.4 Subject to clause 4.6, our liability is limited as follows:
- 4.4.1 Our liability for loss, destruction or damage to goods or property (other than goods being lifted by crane which is covered in 4.4.2 below) is limited to a total of £5 million whether due to our breach of contract or negligence; and,
- 4.4.2 If you are undertaking a lifting operation our liability for loss, destruction or damage to the goods being lifted is limited to a total of £25,000 whether due to our breach of contract or negligence.

We are not able to accept liability above these figures, notwithstanding that the Plant and Equipment will be operated by our Operator.

- 4.5 If you think that there is a possibility that goods or property could be damaged which have a value of more than these limits, then you must notify us in writing before the Plant and Equipment is delivered to the Site. On receipt of such notification, we may choose to make additional coverage available and this will involve an increase in the Hire Charges.

You will not be able to claim more than the amounts set out in clause 4.4 if:

- 4.5.1 you do not notify us that the damage could exceed the above limits;
- 4.5.2 we choose not to have additional coverage made available;
- 4.5.3 you do not agree to meet the extra charge for additional coverage; or
- 4.5.4 the additional coverage fails for some reason that is not our fault.

This will be so, even where we are at fault, except where your claim is for death or personal injury, as mentioned in paragraph 4.6 below.

- 4.6 The limits set out in paragraph 4.4 do not apply to claims for death or personal injury caused by our negligence. There is no limit on the amount of our liability for such claims.

5. LOSS, THEFT OF, OR DAMAGE TO THE PLANT AND EQUIPMENT

- 5.1 Subject to clauses 5.3 and 5.4 below, if the Plant and Equipment is lost, damaged, stolen or destroyed whilst in your care when our Operator is not present, or as a result of your failure to ensure that the Site is safe, you will be liable for the full cost of repairing or replacing the Plant and Equipment.
- 5.2 We may take out insurance to cover the risk to our Plant and Equipment in respect of events set out in clause 5.1. If we do so and you pay the Waiver Fee, we will not pursue you for the costs of repairing or replacing the Plant and Equipment but only to the extent that such costs are

reimbursed to us by our insurers. You will still be liable to us, however, to the extent that the insurers do not reimburse us for the loss or damage. You must take reasonable care of the Plant and Equipment whilst it is in your custody, even if the Waiver Fee has been paid.

- 5.3 You will not be liable to pay us for any damage caused to the Plant and Equipment arising from defects in the Plant and Equipment which were not apparent when it was hired to you or which occur while the Plant and Machinery is being operated by our Operator, unless such damage arises as a result of the Site being unsafe and/or your negligence.
- 5.4 You will not be liable for any loss or theft of the equipment resulting from a fault in the Plant and Equipment's security system which occurred before the Plant and Equipment was delivered to the Site or occurs while the Plant and Machinery is being operated by our Operator, unless the fault in the Plant and Equipment's security system was caused by damage arising as a result of the Site being unsafe and/or your negligence. You must notify us immediately either via the Operator, or, if he is not present, to us at our principal office address if you notice a fault with the Plant and Equipment's security system, including but not limited to faulty locks or other security devices. You must not repair any faults without our prior written consent.
- 5.5 Where the Plant and Equipment, or any part of it, is lost, stolen, damaged or destroyed you must notify us immediately either via the Operator, or, if he is not present, to us at our principal office address, as a matter of urgency, in order that we can notify our insurers. If the insurers refuse to pay us because of a delay in notification by you, you will be liable to us for what would have been recovered from the insurers if you had complied with this clause. You must provide our insurers and us with all reasonable assistance when so requested.
- 5.6 You must notify the police immediately if the Plant and Equipment, or any part of it, is stolen, or has been criminally damaged.

6. DAMAGE TO SITE AND/OR ACCESS

- 6.1 You acknowledge that the Plant and Equipment you have chosen to hire may cause superficial damage to the ground, particularly in wet weather (for example, ruts may be created or paving stones may be cracked). You further acknowledge that the Plant and Equipment may also cause damage to underground services such as drains and sewers. Our delivery driver and/or operator will do their best to limit any such damage, but we cannot be held responsible for any damage of this sort. You are responsible for making good any damage caused to your property or adjoining land in obtaining access.
- 6.2 If you are particularly concerned to avoid superficial damage to the ground you must let us know as soon as possible. We may be able to provide extra protection, although there will be an additional cost in doing so, which we will pass on to you.

7. SITE AND ACCESS

- 7.1 While we do not expect you to have any technical knowledge of the Plant and Equipment you are hiring, it is your obligation to inform us of any visible access or Site restrictions, which you think may cause difficulty. For example, restricted access, limited working space, or overhead obstructions.
- 7.2 We may carry out a Site inspection; if we do we will check both the means of access and the place(s) where you require the work to be carried out. It is your responsibility to undertake any Site preparation that we ask (for example, removing any goods or materials that might hinder the job). We shall not be responsible for lost work time if the Operator is unable to commence or continue work as a result of your failure to complete Site preparation as requested by us.

- 7.3 You must immediately notify us of any change in Site conditions prior to the hire which might affect the safe use of the Plant and Equipment.
- 7.4 Whether or not we carry out an inspection, we may need to ask you for information about such things as the location of cesspits, drains and sewers. You must make every effort to ensure that the information you give us is accurate.
- 7.5 Where access is required over land you do not own, you undertake that you will obtain consent from the respective owners and to pay any charges they may make.
- 7.6 The Plant and Equipment must only be used at the Site. If you want to use the Plant and Equipment at any other place you must first get from us written confirmation that we allow you to do so.

8. DELIVERY AND COLLECTION

- 8.1 Unless agreed otherwise, we will deliver the Plant and Equipment to the Site and collect it from the Site. The cost of delivery and collection will be notified to you prior to the period of hire.
- 8.2 We will give you an estimated time for the arrival of the Plant and Equipment on Site. We will make best endeavours to arrive promptly, but we cannot guarantee the arrival time. You should let us know in writing if there is a particular reason why timing is important.
- 8.3 If it is agreed that you will return the Plant and Equipment rather than us collecting it, you must return the Plant and Equipment to us in the same condition as when we supplied it to you although you will not be responsible for reasonable wear and tear which may occur during the period of hire.
- 8.4 Whether you return or we collect the Plant and Equipment, the Plant and Equipment must be cleaned before it is returned to us. If you have not made a reasonable attempt to clean it, you will be responsible for our reasonable costs for cleaning and restoration of the Plant and Equipment to enable it to be hired to someone else in a fit and proper condition.

9. PLANT AND EQUIPMENT AND THE OPERATOR

- 9.1 It is your responsibility to give the Operator of the Plant and Equipment clear instructions regarding the job you wish to be undertaken. You must provide any further information or explanation the Operator asks you for.
- 9.2 We will ensure that the Operator is competent and qualified to operate the Plant and Equipment.
- 9.3 We will ensure that the Plant and Equipment hired by you is in good working order and is fit for the purpose for which it is normally used.
- 9.4 The Operator's responsibility is generally limited to operating the Plant and Equipment competently and safely to complete the job that you have instructed him to undertake.
- 9.5 The Operator will use his best endeavours to complete the job you instruct him to undertake as expeditiously as possible.
- 9.6 If you need a 'lifting operation' special legal requirements must be met. Such work will normally be carried out as a 'Contract Lift' and the price will include the cost of the Appointed Person, who will have planned a safe method of carrying out the work, and the provision of a supervisor to control the actual lifting operation on site. If the Plant and Equipment includes a crane, the conditions set out in paragraph 12 below will apply.

10. SAFETY

- 10.1 You must not operate the Plant and Equipment yourself.
- 10.2 We will be responsible for the safe operation of the Plant and Equipment by our Operator.
- 10.3 You must follow any safety instructions given by our Operator. You must also take your own sensible safety precautions (for example, you must take all reasonable measures to prevent children from playing on or near the equipment at any time, particularly when the equipment is parked up for the night and our Operator is not able to oversee it).
- 10.4 Whilst we will be responsible for the safe operation of the Plant and Equipment, you must ensure that the Site itself is safe and secure.

11. PAYMENT

- 11.1 The Plant and Equipment can be hired by the day, for the weekend, by the working week, by the week or by the month. If you do not return the Plant and Equipment to us by the times set out below then we will be entitled to charge you for an additional day's (or days') hire.

The latest times, by which the Plant and Equipment must be returned, unless we are collecting it, are as follows:

Plant and Equipment hired for a day	Must be returned within 24 hours
Plant and Equipment hired for a weekend	Must be returned by 8.30 am on Monday
Plant and Equipment hired for a working week (Monday – Friday)	Must be returned by 3.30pm on Friday
Plant and Equipment hired for a week	Must be returned by 3.30 pm on the seventh consecutive day (so if you hire it on Wednesday it must be returned by 3.30 pm Tuesday)
Plant and Equipment hired for a month	Must be returned by 3.30 pm on the last day of the calendar month (so if you hire it on the 15th of the month you must return it by 3.30 pm on 14th of the next month).

- 11.2 The Hire Charges will be charged and based on the length of time for which you require the Plant and Equipment and the Operator. If you agreed to take the Plant and Equipment for a minimum or a fixed period, you must pay the Hire Charges applicable for the whole of the minimum or the fixed period.
- 11.3 You do not continue to pay Hire Charges during stoppages which we could have avoided (such as breakdowns in the Plant and Equipment). Neither do you continue to pay Hire Charges during our Operator's lunch break (if taken).
- 11.4 Stoppages which are not due to a fault on our part, or on the part of our operator, will be charged for. (E.g. stoppages caused by inclement weather, unforeseen problems with the Site or access, punctures or usual running maintenance such as re-fuelling or re-fitting accessories).

- 11.5 You can ask our Operator to stop work at any time. If you do so, you will be responsible for the Hire Charges up to the point at which your request is made including the daily rate for the day on which work ceases, or the agreed minimum or fixed period.
- 11.6 We may ask you for payment of all or part of the Hire Charges in advance. If you give us more than 72 hours' notice that you wish to cancel the hire then we will repay the whole of any such advance payment. If you give us less than 72 hours' notice that you wish to cancel the hire, then we will repay 50% of the advance payment (unless we are able to re-hire the Plant and Equipment in which case we will repay the whole of the advance payments). We will repay the whole of the advance payment if hire of the Plant and Equipment does not proceed due to a fault on our part.
- 11.7 During the period of hire, from time to time, you will be asked to sign a time sheet confirming that it is an accurate record of the Operator's chargeable hours. You should check the time sheet carefully and only sign it if you agree with the information set out.
- 11.8 Hire charges are due at the beginning and/or at the end of the hire. We will let you know when you must pay the Hire Charges at the time you hire the Plant and Equipment.
- 11.9 You will pay the Hire Charges in full and upon the due dates, and time of payment is of the essence.
- 11.10 If any payment due under this Agreement is not paid in full and on the due date, interest will be charged from the due date to the date of payment at the base rate of the Bank of England plus 8% per annum.

12. CRANE CONTRACT LIFTS

If the Plant and Equipment includes a crane, the crane will be provided and operated in accordance with the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) and the British Standard Code of Practice for the Safe Use of Cranes (BS 7121). We will supply a competent crane supervisor who will be responsible for organising the lifting operation as planned by our Appointed Person, selecting suitable lifting tackle and ensuring that the work can be undertaken safely. Our crane supervisor will have authority to stop the operation whenever he considers it would be dangerous to continue and you agree to him having overall control of the lifting operation.

13. NOTIFICATION OF ACCIDENTS

You must notify us immediately if there is any accident involving the Plant and Equipment which results in damage to the Plant and Equipment or to other property or injury to or the death of any person.

14. TERMINATION OF HIRE

- 14.1 You can bring this Agreement to an end at any time by notifying our Operator or us that you wish to do so and by paying the Outstanding Balance.

14.2 If you breach any term of this Agreement, we may terminate this Agreement and require the immediate return of the Plant and Equipment to us. You undertake to return the Plant and Equipment to us upon termination of this Agreement. We will not ask you to return the Plant and Equipment before the end of the minimum or fixed period unless you are in default.

15. UNAUTHORISED RE-HIRING OF EQUIPMENT

You must not re-hire, sub-let or lend any of the Plant and Equipment to any third party or otherwise part with possession of the Plant and Equipment.

16. ACCESS BY US FOR SERVICING AND INSPECTION AND RECOVERY OF PLANT AND EQUIPMENT

You undertake that you will allow us to have access to your premises at any reasonable time to enable us to inspect, test, adjust, repair or replace the Plant and Equipment as necessary while it is in your possession or to recover the Plant and Equipment.

17. NAMEPLATES

You must not remove, deface or cover up any nameplate or identification mark or number on the Plant and Equipment, nor put any mark on the Plant and Equipment, which might indicate or suggest that the Plant and Equipment belongs to you.

18. GENERAL

18.1 If any provision of this Agreement is held to be unlawful, void or unenforceable then that provision will be deemed severable and will not affect the validity and enforceability of the remaining provisions, to the extent permitted by law.

18.2 Notices from you to us should be sent to us at our principal office address. Notices from us to you will be sent to the address provided to us by you or to any other address which you have notified to us in writing. You will notify us immediately in writing of any change to your address.

18.3 This Agreement incorporates all of the terms agreed between you and us. It cannot be varied except by a document signed by you and us on or after the date of this Agreement.

18.4 A party who is not a party to this Agreement shall have no right to enforce any term of this Agreement under the Contracts (Rights of Third) Parties Act 1999.

18.5 If any amount is payable to you by us under this Agreement, we may withhold from those monies an amount equal to the total monies you owe us under this Agreement.

18.6 If the Site is situated within the United Kingdom, then the court whose jurisdiction covers the Site will have exclusive jurisdiction and interpretation of the law for this Contract. If the original Site is not situated within the United Kingdom, then the relevant jurisdiction and interpretation of the law of the Contract will be governed by the country where our head office is located.

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