

Terms and general conditions for the hiring of plant

1. Definitions and general

- 1.1 The Owner means O'Malley Haulage Limited and includes its successors or assigns.
- 1.2 The Hirer means the company, firm, person or public authority shown overleaf taking the Owner's Plant on hire and includes their successors or personal representatives.
- 1.3 "Plant" means all classes of plant and machinery, which the Owner agrees to hire to the Hirer.
- 1.4 The term "Owner's Employee" shall mean any employee of the Owner whose job is either to drive or operate the Plant or to provide any other services in connection with the Plant.
- 1.5 "Advice" means any designs, drawings or specifications in relation to the Plant or any information or advice as to the planning supervision or control of the Hirer's operations or the installation of the Plant.
- 1.6 Hire rates are the Owner's current standard rates unless otherwise agreed.
- 1.7 Weekly rates are for a 40-hour 5-day week. Additional charges will be made for shift work and weekend work.
- 1.8 These terms and conditions shall apply to the hire of all Plant by the Owner to the Hirer and shall not be overridden by any terms and conditions of the Hirer.
- 1.9 No variation of these terms and conditions will be effective unless agreed in writing by a director of the Owner. All terms other than those expressly set out in these terms and conditions are hereby excluded.
- 1.10 Acceptance of the Plant on site by the Hirer or its delivery on site in accordance with the Hirer's instructions signifies acceptance of these terms and conditions unless otherwise agreed in writing.
- 1.11 Where the Hirer deals with the Owner as a consumer these terms and conditions do not and will not affect his statutory rights.
- 1.12 These terms and conditions shall be governed by and construed according to the laws of England.

2. Basis of charging

The Plant is hired to the Hirer subject to these terms and conditions and to the terms set out overleaf. The Hirer agrees to pay the hire charges which will commence from the time and at the rate(s) shown overleaf and continue until the Plant is returned to or collected by the Owner and a receipt issued by the Owner. Telephone off-hires will not be accepted unless validated by an off-hire number notified by the Owner to the Hirer.

3. Other charges

Hire charges relate solely to the hire of the Plant. They do not include fuel and oil supplied with the Plant, carriage to and from the Owner's premises, charges in relation to the supply of an Owner's Employee, or any other costs incurred by the Owner, all or which will be charged separately to the Hirer.

When carriage charges are quoted by the Owner, such charges will include a charge for a maximum of 30 minutes attendance by the Owner's vehicle at the address specified by the Hirer. Further time will be paid for by the Hirer.

4. Wages and other charges relating to Owner's Employees

The Hirer shall pay the agreed hourly rates for each Owner's Employee supplied with the Plant and such rates are payable whether or not the Owner's Employee is actually engaged operating the Plant or providing any other service in connection with the Plant. The Hirer shall sign the time record sheets of the Owner's Employee daily or weekly. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time record sheets.

All travelling time and fares for Owner's Employees whether during, at the beginning or the end of the hire period are payable by the Hirer in accordance with the appropriate national agreement.

5. Payment terms

All charges are payable on demand except that payment terms for authorised credit customers are 30 days net from the date of invoice. The Owner shall be entitled to charge interest at the rate or 2% per month from the due date to the date of settlement. Should the Hirer fail to settle any invoice by the due date other than for a valid reason, then all other invoices become payable immediately by the Hirer.

6. Loading and unloading the Plant

The Hirer shall be responsible for loading and unloading the Plant at the Hirer's site, and at the Owner's premises. Any Owner's Employee who helps load or unload the Plant is deemed to be an employee of the Hirer and the provisions of paragraph 7 shall apply.

7. Responsibility for Owner's Employees

When an Owner's Employee is supplied by the owner with the Plant, the Owner shall supply a competent person but such person shall be under the direction and control of the Hirer. The Owner's Employee shall for all purposes connected with such employment be regarded as the servant of the Hirer who alone shall be responsible for all claims arising in connection with the delivery, preparation or operation of the Plant.

The Owner shall have no liability for any loss or damage caused by any act or omission whatsoever of an Owner's Employee or the consequences thereof. The Hirer shall fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or loss or damage to property howsoever caused including all costs and charges in connection therewith and arising out of or in connection with any act or omission of the Owner's Employee whilst the Hirer is responsible for him and whether or not arising under statute or common law or from the negligence or breach of duty or other wrongful act or omission of the Owner or any of the Owner's Employees.

8. Advice

If the Owner or any of the Owner's Employees give any Advice it is provided strictly on the basis that it is for guidance only, and without any responsibility being accepted. The onus is on the Hirer to verify the accuracy and/or appropriateness of such Advice and to accept or reject accordingly. If any such Advice is given it is given on the basis that no legal liability shall attach to the Owner or any of the Owner's Employees.

The Hirer shall fully and completely indemnify the Owner and the Owner's Employees against all claims by any person whatsoever for injury to person or loss or damage to property howsoever caused including all costs and charges in connection therewith and arising from the giving of such Advice whether arising under statute or common law or from the negligence or breach of duty or other wrongful act of omission of the Owner or any of the Owner's Employees.

9. Responsibility of persons signing

The person signing overleaf warrants that he has the authority of the Hirer to make the contract on the Hirer's behalf. The Owner shall be entitled to treat the Hirer as contractually bound by these terms and conditions unless the Hirer can demonstrate that there were no reasonable grounds for the Owner to believe that such person had authority to bind the Hirer.

10. Delivery in good order

The person signing overleaf has been afforded an opportunity to inspect the Plant which is deemed to be in good working order and wholly free from damage at the time of signature. If the Plant has been accepted on site by the Hirer, the Plant is also deemed to be in good working order and wholly free from damage at the time of delivery. Any shortages of Plant must be notified to the Owner within 24 hours of the commencement of the hire and confirmed in writing within 72 hours. If the Hirer fails to do this hire charges will continue and the Hirer will be responsible for the cost of replacing shortages in accordance with paragraph 11.

11. Lost, non-returned, damaged or unclean Plant

The Hirer must immediately notify both the Owner and the police of any loss or theft of the Plant. When the Plant is not returned or is returned incomplete the liability of the Hirer shall only cease when the Hirer pays to the Owner the manufacturer's current list price for the missing or incomplete item of Plant. In the event that Plant is manufactured to the Owner's design the cost of the missing

or incomplete item is the current price charged by the Owner to a customer who wishes to purchase that item of Plant. The Hirer agrees to pay to the Owner all costs incurred by the Owner in rectifying the condition of the Plant if it is returned damaged unclean or incomplete. Hire charges will continue until such rectification is complete.

12. Maintenance of Plant and breakdown procedures

The Hirer shall ensure that the Plant remains safe, serviceable and clean. Any breakdown or any unsatisfactory working of Plant must be immediately notified to the Owner. Under no circumstances shall the Hirer repair the Plant, except for punctures, unless authorised by the Owner. Such Plant must be returned to the Owner's premises for examination or when rectification elsewhere is requested, the Hirer agrees to pay carriage if required by the Owner. Punctures are to be mended by and at the cost of the Hirer.

13. Safe use of the Plant

The Hirer confirms that it has the necessary knowledge and experience to operate and use the Plant. The Hirer will not misuse the Plant. The Hirer will not allow any person to use the Plant who is not properly instructed in its use and will ensure that all applicable health and safety rules and regulations are observed.

Where the Plant comprises electrical equipment it must be connected to the correct supply by a qualified electrician. The Hirer is responsible for providing a suitable 3 phase and earth supply to the base of each item or Plant.

14. Security of the Plant

The Hirer shall not sell or otherwise part with possession and/or control of the Plant and shall remain responsible for the Plant and its safekeeping during the hire period. Plant must not be removed without the authority of the Owner from the site specified by the Hirer if the Plant is collected by the Hirer, or from the address to which the Owner has delivered the Plant. The Hirer shall keep the site at which the Plant is located safe and secure.

15. Access and ground conditions

The Hirer is responsible for the provision of free and suitable access to and from the site (including the removal and reinstatement of local obstructions) and for ensuring suitable ground conditions for the erection, operation and dismantling of the Plant. No responsibility will be accepted by the Owner for damage to any surface over which the Plant has been moved to reach its intended position of use and the Hirer should therefore take steps to protect surfaces (paving slabs, soft ground etc) before delivery of the Plant. The reinstatement of any fixing holes drilled in buildings is the responsibility of the Hirer.

16. Hirer's responsibility - third parties

The Hirer shall fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or loss or damage to property howsoever caused including all costs and charges in connection therewith and arising from or in connection with the use of the Plant and whether or not arising under statute or common law or from the negligence or breach of duty or other wrongful act or omission of the Owner or any of the Owner's Employees.

17. Consequential losses

The Owner shall not be liable for any consequential expenses, liabilities, losses, claims or proceedings whatsoever caused by, or arising out of, the late delivery, nondelivery, unsuitability or repossession of the Plant, or any breakdown or defect in the Plant.

18. Insurance and notification or accidents

The Hirer shall be responsible for obtaining all prudent insurance cover, including third party liability and cover against loss or damage to the Plant. The Hirer shall produce on demand to the Owner a copy of the policy or policies. The Hirer shall hold on trust for the owner all policy proceeds in or towards satisfaction of the Hirer's obligations under paragraph 11 above. If the Plant is involved in any accident resulting in injury to persons or damage to property immediate notice must be given to the Owner by telephone and confirmed in writing. The Hirer shall not admit any liability or compromise any claim relating to the Plant without the consent in writing of the Owner.

19. Period and determination of hire

If the Hirer is an individual within the meaning of the Consumer Credit Act 1974 the maximum period of hire shall be 3 months.

The Owner shall be entitled at any time and for any reason whatsoever and without explanation to terminate with immediate effect the hire contract and to repossess the Plant.

20. Right of access

The Hirer shall allow the Owner access to the Plant at all reasonable times for the purpose of inspection, maintenance, replacement or repossession.

21. Invalidation

Should any of these terms and conditions be held to be invalid such invalidation will not affect the validity of the remaining terms and conditions.