

Hire of Plant, Skips & Roll-On Roll-Off Receptacles Terms

1. DEFINITIONS

1.1 The definitions and rules of interpretation in this Condition 1 apply in these Conditions.

Consumer: a Hirer hiring the Plant in their own personal capacity for private use.

Contract: any contract between the Owner and the Hirer for the hire of the Plant in accordance with and subject to these Conditions.

Day: shall be 8 hours a day, unless otherwise specified in the Contract.

Hire Period: shall commence from the time when the Plant leaves the Owner's depot or place where last employed until the Plant is received back at the Owner's depot or other agreed location.

Hirer: the person who enters into a Contract.

Owner: MHH Contracting Limited (CRN: 1921630) of 18 Stalker Walk, Sheffield, South Yorkshire, S11 8NF.

Plant: covers all classes of plant, machinery, vehicles, equipment, tools and accessories therefor, including skips and roll-on and roll-off receptacles, which the Owner agrees to hire to the Hirer under a Contract.

public highway: a highway maintainable at the public expense.

Site: shall be the location specified at which the Plant is to be used.

1.2 Reference to a law is a reference to it as it is in force for the time being and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Reference to the masculine includes the feminine and the neuter, reference to the singular includes the plural and, in each case, vice versa and, reference to a person includes companies, firms, corporations and public authorities.

1.4 Headings do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

2.1 The Conditions shall apply to all Contracts and, subject to any variation under Condition 2.2, are the only terms and conditions on which the Owner agrees to hire Plant to the Hirer to the exclusion of all other terms and conditions.

2.2 No terms or conditions of the Hirer endorsed on, delivered with, or contained in the Hirer's purchase order, order confirmation or other documents form part of the Contract and, subject to Condition 2.2, any attempt by the Hirer to exclude or limit any Conditions shall be void and shall not form part of the Contract.

2.3 Any variation to the Conditions, and any representations about the Plant, shall have no effect and shall not form part of the Contract unless agreed in writing by the Owner.

2.4 The Hirer acknowledges that it has not relied on any written or oral statement, promise or representation made or given by, or on behalf of, the Owner that is not set out in the Conditions.

2.5 The Owner will provide the Hirer with an oral or written quotation. A quotation so provided is an invitation to treat by the Owner to hire the Plant, subject to the Conditions, to the Hirer. A quotation is valid for 30 days from its date, provided that the Owner has not previously withdrawn it.

2.6 An acceptance of a quotation or the placing of an order by the Hirer shall be deemed to be an offer, subject to the Conditions, to hire the Plant stated therein from the Owner.

2.7 No quotation accepted or order placed by the Hirer shall be deemed to be accepted by the Owner until the Owner confirms acceptance to the Hirer orally or in writing.

2.8 No binding Contract will come into existence until an order acknowledgement is given by the Owner in accordance with Condition 2.7 or, if earlier, by the Owner delivering the Plant to the Hirer. Acceptance of the Plant on Site implies acceptance of all the Conditions by the Hirer.

3. DESCRIPTION

3.1 The quantity and description of the Plant shall be as set out in the Owner's quotation or order acknowledgement. All samples, descriptions, specifications and illustrations issued by the Owner or contained in the Owner's brochures, website or other materials are issued or published to provide an approximate idea of the Plant. They should not be relied on by the Hirer as precise or construed literally and shall not form part of the Contract.

4. DELIVERY AND COLLECTION OF PLANT

4.1 The Owner will, unless otherwise agreed, deliver the Plant to the Site and collect it. The Hirer shall pay the cost of delivery and collection of the Plant.

4.2 The Owner will provide an estimated time for the arrival of the Plant on Site and the subsequent collection of the Plant from the Site. The Owner will use reasonable endeavours to arrive promptly, but cannot guarantee the arrival time.

4.3 The Hire Period shall commence from the time when the Plant leaves the Owner's depot or place where last employed and shall continue until the Plant is received back at the Owner's named depot or other agreed location.

4.4 Where, on collecting the Plant, the Plant contains waste products, the Owner shall only take such waste products on the Hirer entering into a further contract with the Owner in respect of the collection and treatment of such waste in accordance with the Owner's standard terms and conditions for such service.

5. UNLOADING AND LOADING

5.1 The Hirer shall be responsible for the unobstructed access to, and, unless otherwise agreed in writing, for unloading and loading of the Plant (where applicable) at, the Site, and any personnel supplied by the Owner for such unloading and/or loading shall be deemed to be under the direction and control of the Hirer. Such personnel shall, for all purposes in connection with such 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 condition 14), who alone shall be responsible for all claims arising in connection with unloading and/or loading of the Plant by, or with the assistance of, such personnel.

5.2 The Hirer shall inform the Owner of any visible access or Site restrictions, which may cause difficulty to or delay in the unloading or loading of the Plant at the Site, in advance.

6. DELIVERY IN GOOD ORDER AND MAINTENANCE

6.1 Unless otherwise notified in writing by the Hirer to the Owner, in the case of Plant supplied with an operator within 2 hours of the Plant being delivered to the Site, and in the case of Plant supplied without an operator at the time of delivery, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, and 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 above stated shall be calculated from the time of completed erection of the Plant. The Hirer shall be responsible for the safe keeping, use in a workmanlike manner within the manufacturer's rated capacity and return on the completion of the hire in equal good order (fair wear and tear excepted) of the Plant.

6.2 The Hirer shall, when hiring Plant without an Owner's operator, take all reasonable steps to keep acquainted with the state and condition of the Plant. If such Plant be continued at work or in use in an unsafe and/or unsatisfactory state and/or environment, the Hirer shall be solely responsible for any damage, loss or accidents, whether directly or indirectly arising, which may result.

6.3 The current 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 hire.

7. TIMBER MATS OR EQUIVALENT

7.1 If the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel or be transported over without timbers or equivalents, the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the Plant to travel over, work on, or be transported over, including for the purpose of delivery and collection.

7.2 Where the hire is for lifting equipment, any sound timber or other material supplied by the Owner for use without riggers/stabilisers is provided solely to assist the Hirer and expressly not to relieve it of its legal, regulatory or contractual duties to ensure adequate stability of the lifting equipment under the imposed loading.

8. SERVICING AND INSPECTION

8.1 The Hirer shall at all reasonable times allow the Owner, its agents or its insurers to have access to the Plant to inspect, test, adjust, repair or replace the same.

9. HANDLING OF PLANT

9.1 Unless otherwise agreed, a driver/operator/authorised person will be 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/operators/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 Condition 14), who shall be responsible for all claims arising in connection with the operation of the Plant by the said drivers/operators/persons. The Hirer shall not allow any other person to operate such Plant without the Owner's previous consent to be confirmed in writing.

10. BREAKDOWN, REPAIRS AND ADJUSTMENT

10.1 When the Plant is hired without an Owner's driver/operator any breakdown, or the unsatisfactory working of any part of the Plant, must be notified immediately to the Owner. Any claim for breakdown time will only be considered from the time and date of notification.

10.2 Full allowance for the hire charges and for the reasonable cost of repairs that have been authorised by the Owner will be made to the Hirer for any stoppage due to breakdown of 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.

10.3 The Hirer shall not, except for the changing of any tyre and repair of punctures, repair the Plant without the written authority of the Owner. The changing of any tyre and repair of punctures are the responsibility of the Hirer, who should arrange for them to be changed/repaired without awaiting authorisation from the Owner. The Hirer is responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture and Conditions 10.1 and 10.2 shall not apply to such.

10.4 The Hirer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner due to the Hirer's negligence, misdirection or misuse of the Plant, whether by the Hirer or its servants. 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.

10.5 Where the Plant, or any part of it, is lost, stolen, damaged or destroyed, the Hirer must notify the Owner immediately (via the operator, if present).

11. OTHER STOPPAGES

11.1 No claims will be admitted (other than those allowed for under Conditions 10.1 and 10.2) for stoppages through causes outside the Owner's control, including bad weather or ground conditions, nor shall the Owner be responsible for the cost or expense of recovering any Plant from soft ground.

12. LOSS OF OTHER PLANT DUE TO BREAKDOWN

12.1 Each item of Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units (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 for 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 a unit for the purpose of breakdown.

13. LIMITATION OF LIABILITY

13.1 Subject to the other Conditions, Condition 13 sets out the entire financial liability of the Owner (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Hirer in respect of any breach of the Contract or Conditions and any representation, statement, tortious act or omission, including negligence, arising under or in connection with the Contract.

13.2 Subject to Conditions 13.3, 13.4 and 13.5:

13.2.1 the Owner's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract hire charges; and

13.2.2 the Owner shall not be liable to the Hirer for any pure economic loss, loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of business, loss of contracts with any third party, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation (howsoever caused) which arise out of or in connection with the Contract; and

13.2.3 whenever the Contract (including these Conditions) 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.

13.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

13.4 Condition 13.3 shall not apply to a Contract with a Consumer and any statutory Consumer rights are unaffected by these Conditions.

13.5 Nothing in these Conditions excludes or limits the Owner's liability for death or personal injury caused by the Owner's negligence, or for fraud or fraudulent misrepresentation, or under section 2(3) of the Consumer Protection Act 1987, or for any matter which it would be illegal for the Owner to do so.

13.6 The Hirer shall indemnify and hold the Owner harmless against any liability, loss or damage incurred due to any breach of the Contract by the Hirer, except to the extent that the liability, loss or damage arises as a result of the Owner's negligence.

14. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

14.1 Nothing in this Condition 14 shall affect the operation of Conditions 3.1, 6, 9 and 10.

14.2 The Hirer shall make good to the Owner all loss of or damage to the Plant from whatever cause the same may arise (fair wear and tear excepted) throughout the Hire Period (except as provided in Condition 10) and shall fully and completely indemnify 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 throughout the Hire Period, and in respect of all costs and charges in connection therewith whether arising under statute or common law. In the event of loss of or damage to the Plant, unless otherwise agreed by the Owner in writing, hire charges shall continue until settlement has been effected.

14.3 Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury which arises:-

14.3.1 prior to delivery of the Plant to the Site (or, where the Site is not immediately adjacent to a public highway, prior to it leaving the public highway) where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner; or

14.3.2 during the erection and/or dismantling of any Plant where such Plant requires to be completely erected/dismantled on Site, always

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- provided that such erection/dismantling is under the exclusive control of the Owner or its agents' or
- 14.3.3 after the Plant has been removed from the Site (or, where the Site is not immediately adjacent to a public highway, after it joins the public highway) and is in transit to the Owner by transport of the Owner or as otherwise arranged by the Owner; or
- 14.3.4 where Plant is travelling to or from Site (or, where the Site is not immediately adjacent to a public highway, prior to it leaving or after it joins the public highway) under its own power with a driver supplied by the Owner.
- 14.4 The Hirer accepts and acknowledges that the Plant may cause superficial damage to the Site, particularly in wet weather (for example, ruts may be created or paving stones may be cracked) and may also cause damage to underground services such as drains and sewers. The driver and/or operator will use reasonable endeavours to limit any such damage where they are aware of underground services but the Owner cannot be held responsible for any damage of this sort. The Hirer is responsible for making good any damage caused to property or adjoining land in obtaining access to the Site and/or using the Plant.
15. **NOTICE OF ACCIDENTS**
- 15.1 The Hirer must follow any safety instructions given by the Owner and/or the operator. 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. In relation to any claim in respect of which the Hirer is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's consent in writing.
16. **RE-HIRING OF PLANT AND CHANGE OF SITE**
- 16.1 The Plant or any part thereof shall not be re-hired, sub-let, or lent to any third party without the written permission of the Owner.
- 16.2 The Plant shall not be moved from the Site to which it was delivered/consigned without the written permission of the Owner.
17. **RETURN OF PLANT FOR REPAIRS**
- 17.1 Without prejudice to Conditions 10 and/or 14, if the Owner decides that urgent repairs to the Plant are necessary during the Hire Period, it may arrange for such repairs to be carried out on Site or at any location of its nomination. In that event the Owner shall be obliged to replace the Plant with similar Plant, if available, with the Owner paying all transport charges involved. In the event of the Owner being unable to replace the Plant it shall be entitled to determine the Contract forthwith by giving written notice to the Hirer. If such determination occurs less than 3 months from the commencement of the Hire Period the Owner shall pay all transport charges involved otherwise the Owner shall only be liable for the cost of reloading and return transport.
18. **BASIS OF CHARGING**
- 18.1 The Hirer shall render to the Owner for each week an accurate statement of the number of hours the Plant has worked each day. Where the Plant is accompanied by the Owner's driver or operator the Hirer shall sign the employee's time record sheets. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time record sheets.
- 18.2 Subject to Condition 9, full allowance per Day 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.
- 18.3 Plant shall be hired out either for a stated minimum number of hours per Day or without any qualification as to minimum hours.
- 18.4 Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time.
- 18.5 In the case of Plant which requires 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 hire, such modification of the hire charge and the period for which it shall apply shall be stated on the Contract.
19. **PLANT HIRED DAILY OR WEEKLY/MONTHLY WITHOUT QUALIFICATION AS TO HOURS**
- 19.1 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 Day.
- 19.2 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 or monthly rate will be made for each Day broken down calculated to the nearest half Day.
20. **PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 40 HOURS PER BASIC WEEK**
- 20.1 If no breakdown occurs, the full hire for the minimum period in the Contract will be charged and an additional pro rata charge will be made for hours worked in excess of such minimum period. Subject to Condition 10, allowance will be made for breakdowns up to 8 hours, providing always that where the actual hours worked are in excess of the minimum period less breakdown time, the actual hours worked shall be chargeable.
21. **"ALL-IN" RATES**
- 21.1 Where "All-In" rates are charged by agreement the minimum period and hire rates shall be as defined in and accordance with the Contract, subject to Condition 23.
22. **NOTICE OF TERMINATION OF CONTRACT**
- 22.1 Consumers may cancel the Contract at any time within 7 working days beginning with the day after the day on which the Contract is made and receive a refund of any price or part paid. This right to cancel will not apply once the Hire Period has commenced.
- 22.2 Where the Hire Period is indeterminate, or having been defined becomes indeterminate, the Contract shall be determinable by either party giving the other 7 days' notice in writing, except in cases where the Plant has been lost or damaged. Notwithstanding that the Owner may have agreed to accept less than 7 days' notice of termination the Hirer's obligations under Condition 14 shall continue until the Plant is returned to the Owner in accordance with Condition 4 or until the Owner has collected the Plant within the 7 days following the acceptance of short notice. Oral notice given by the Hirer to the Owner's driver or operator shall not be deemed to constitute compliance with this Condition 22.
23. **WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT**
- 23.1 All chargeable items shall be paid by the Hirer at the rates contracted 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 employer's statutory contribution shall be charged as additions at cost by the Owner and shall be admitted and paid by the Hirer.
24. **TRAVELLING TIME AND FARES**
- 24.1 Travelling time and fares for drivers, operators and any person supplied by the Owner, similar expenses incurred at the beginning and end of the Hire Period and where appropriate return fare of the driver, operator and any person supplied by the Owner to his home will be chargeable at cost.
25. **FUEL, OIL AND GREASE**
- 25.1 Fuel, oil and grease supplied by the Owner shall be charged at net cost or an agreed estimate of such and when supplied by the Hirer shall be of a grade or type specified by the Owner.
26. **SHARPENING OF DRILLS/STEELS ETC.**
- 26.1 The cost of re-sharpening shall be borne by the Hirer.
27. **OWNER'S NAME PLATES**
- 27.1 The Hirer shall not remove, deface or cover up the Owner's name plate or mark on the Plant indicating that it is its property.
28. **GOVERNMENT REGULATIONS**
- 28.1 The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Factories Acts, Health and Safety at Work Act etc 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.
29. **PROTECTION OF OWNER'S RIGHTS**
- 29.1 The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant, except as provided under Condition 16, 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 29 except in the event of Government requisition.
- 29.2 If the Hirer defaults in punctual payment of any sum due to the Owner for hire of Plant or any other charges; or fails to observe and perform the Conditions or any provision of the Contract; or suffers any distress; or allows execution to be levied against it; or makes or proposes to make any arrangement with its creditors; or becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996; or does or causes to be done or permits or suffers any act or thing whereby the Owner's rights in the Plant may be prejudiced or put into jeopardy, this Contract may forthwith be determined by notice from the Owner to the Hirer (notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature).
- 29.3 If the Owner serves notice on the Hirer under Condition 29.2 the Contract shall thereupon be deemed determined by reason of the Hirer's breach and it shall be lawful for the Owner to retake possession of the said Plant and, for that purpose, the Owner is granted an irrevocable licence at any time to enter into or upon the Site or any premises where the Plant may be and recover the Plant.
- 29.4 The determination of the Contract under Condition 29.2 shall not affect the Owner's right to recover from the Hirer any monies due to the Owner under the Contract and shall be without prejudice to any of the Owner's other rights and remedies. In particular, without limitation, the Owner shall be entitled to claim the hire charges outstanding as at the date of determination of the Contract under Condition 29.2, return transport charges under Condition 4, and damages for the Hirer's actual or deemed breach of the Contract under Condition 29.2.
30. **DISPUTE RESOLUTION**
- 30.1 Subject to Condition 30.2, the formation, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 30.2 In relation to a Contract with a Consumer only: If the original Site is in England or Wales Condition 30.1 shall apply; If the original Site is in Scotland or Northern Ireland then all aspects of the Contract shall be governed by and interpreted in accordance with Scots law and Northern Ireland law respectively.
- 30.3 The Scheme for Construction Contracts contained in the Scheme for Construction Contracts (England and Wales) Regulations 1998, or any amendment or re-enactment thereof for the time being in force, shall apply to the Contract. 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. In paragraph 21 of the Scheme "this paragraph" shall be deleted and "paragraph 20" substituted.
- 30.4 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.
31. **COMMUNICATIONS**
- 31.1 All notices sent under the Contract must be in writing. All communications and notices sent, and invoices issued, shall be sent to the other party's registered address, or such other address as is notified in writing, either by hand, first class post, email or facsimile and shall be deemed served on delivery if delivered by hand, 48 hours after posting if sent by post, and on completion of transmission if sent by email or facsimile.
- 31.2 Communications addressed to the Owner must be marked for the attention of one of the Owner's officers or senior managers, or any other authorised person notified as such by the Owner.
32. **GENERAL**
- 32.1 Each right or remedy of the Owner under the Contract is without prejudice to any other right or remedy of the Owner whether under the Contract or otherwise.
- 32.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract, and the remainder of such provision, shall continue in full force and effect.
- 32.3 In the event that such court, tribunal or administrative body of competent jurisdiction, referred to in Condition 32.2, decides that such provision is not severable, the parties agree to try to substitute the relevant provision with a legal, valid, enforceable and reasonable provision which achieves, to the greatest extent possible, the same effect as the original provision.
- 32.4 Failure or delay by the Owner in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Owner of any breach of, or any default under, any provision of the Contract by the Hirer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 32.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
33. **CHARGES AND PAYMENT**
- 33.1 In consideration of the provision of the Plant by the Company, the Buyer shall pay the charges
- 33.2 Unless agreed otherwise, the Buyer shall pay each invoice issued to it by the Company, in full and in cleared funds, as follows:-
- 33.2.1 for Buyers which have an account which has not reached its credit limit with the Company, within 30 days of the date of the Company's invoice;
- 33.2.2 for Buyers without an account, or with an account that has reached its credit limit, upon supply by the Company or within 7 days of the date of an invoice from the Company;
- 33.2.3 for Consumers, on provision of Plant by the Company; and/or
- 33.2.4 where additional charges are made in accordance with the Conditions within 30 days of the date of the Company's invoice.
- 33.3 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Company any sum due, pursuant to and in accordance with the Contract, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Buyer shall pay the interest immediately on demand and/or to suspend all Services under any other contract until payment has been made in full.
- 33.4 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 33.5 Any disputed items raised on an invoice by the Company must be notified in writing to the Company by the Buyer within 14 days of the date of the invoice.
- SUPPLEMENTARY CONDITIONS APPLICABLE TO MOBILE AND CRAWLER CRANES TO BE READ IN CONJUNCTION WITH THE ABOVE CONDITIONS FOR THE HIRE OF PLANT**
- EXPLANATORY NOTE:** The purpose of these Supplementary Conditions is, partly, to raise awareness of the Hirer's responsibilities under B S Code of Practice 7121 for the Safe Use of Cranes and partly to define contractually the extent of the Owner's and Hirer's responsibilities as between themselves. BS 7121 makes it clear that the Hirer is in overall control of the lifting operation and has responsibility for providing a suitably trained and experienced "appointed person" to ensure adequate supervision of the operation. The Owner's responsibility is limited to providing a competent driver and a crane that is properly maintained, inspected, tested where necessary, examined and certificated. It is a specific recommendation of BS 7121 that where the Hirer does not have the expertise to carry out the lifting operation he should employ the Owner or another competent organisation to undertake the work on a "Contract Lift" basis.
1. **DEFINITIONS AND PRIMACY**
- 1.1 These Supplementary Conditions Applicable to Mobile and Crawler Cranes shall be referred to as the "Crane Supplementary Conditions" and the above conditions shall be referred to as the "Conditions".
- 1.2 Unless the context suggests otherwise Condition 1 of the Conditions shall apply to these Supplementary Conditions.
2. **PLANNING, SUPERVISING, SLINGING, HANDLING**
- 2.1 In order to comply with the requirements of the Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998 No. 2307) and BS 7121 the Hirer is responsible for planning, supervising and controlling the lifting operations, including the preparation and distribution of risk assessments, method statements and for the safe slinging of the goods to be lifted or handled.
- 2.2 If advice or information is sought from and given by any person supplied by the Owner, the Hirer understands and accepts that such advice or information is given without responsibility and not to relieve or reduce the Hirer's requirement to make its own independent assessment as outlined above.
3. **INSURANCE**
- 3.1 The Hirer shall take out and maintain insurance against any and all liabilities the Hirer might incur under the Contract provided the same is commercially available. The Owner reserves the right to require confirmation that the Hirer is complying with its insurance obligations.
- 3.2 Without prejudice to the Hirer's insurance obligations, the Owner and the Hirer may agree that the Owner shall insure against certain specified liabilities or losses of the Hirer in which case the Owner shall be entitled to charge the Hirer. Such insurance shall be subject to exclusions and excesses.
4. **LIMITATION OF LIABILITY**
- 4.1 Without prejudice to Condition 13 of the Conditions, the Owner shall have no liability in respect of any damage, including but not limited to damage to:
- 4.4.1 any goods or other thing lifted or to be lifted;
- 4.4.2 any surface or subsurface features such as underground services;
- 4.4.3 any above ground structures, including any overhead cables, overhanging or protruding things which might result from the travelling, positioning or working of the crane or of any support vehicle.
5. **CRANE CAPACITY**
- 5.1 In the event that the Contract specifies a particular type of crane or support vehicle the Owner reserves the right to supply a suitable alternative crane or support vehicle to that specified. Acceptance of the crane or support vehicle on Site shall be acceptance of the variation of the Contract in respect of the crane or support vehicle supplied.
6. **PROVISION OF LIFTING GEAR**
- 6.1 If requested and specified by the Hirer in advance, the crane will be provided with specific certificated lifting gear, subject to availability and at additional cost. The Owner accepts no responsibility for loss or delay should the lifting gear prove unsuitable.
7. **GROUND CONDITIONS**
- 7.1 Without prejudice to the terms of Condition 7 of the Conditions the Hirer shall be entirely responsible for the preparation and maintenance of any ground upon which the crane or support vehicles will travel over or from which they will operate. The Hirer shall be fully liable to the Owner for any damage to the crane or support vehicle caused by ground conditions and shall indemnify the Owner and hold the Owner harmless against any liability, expense, loss or damage caused by ground conditions.
8. **TRAVELLING, ERECTION AND DISMANTLING**
- 8.1 Any time spent setting up, transporting and moving the crane and support vehicles, erecting and dismantling the jibs and transporting additional jibs, sections or ballast is payable by the Hirer to the Owner at the rate specified in the Contract. The Hirer shall also allow the Owner, or any representative of the Owner, free and unrestricted access to the crane and support vehicles and to all areas of their operation.
- 8.2 Insofar as the Hirer's use of the crane will require any licence, permission or authorisation from any private or public body or government or Local Authority or the giving of notice to any such body, Government or Authority then the obtaining of any such licence, permission or authorisation, or the giving of any such notice, shall be the entire responsibility of the Hirer, who must ensure that sufficient notice is given to the owner to guarantee compliance with Movement Regulations. This responsibility extends to ensuring that the Site is clear of all obstructions and that traffic management arrangements are set up and operated correctly. Where the Owner is required to obtain such licence, permission or authorisation or to supply traffic management on the Hirer's behalf a charge will be added.
- 8.3 The Hirer shall be liable to the Owner for the agreed fees and charges regardless of any change in the Hirer's circumstances or the circumstances affecting the use to which the Hirer intends or intended to put the crane or support vehicle and any decision to accept a cancellation or variation of the Contract in any respect shall be at the Owner's full and entire discretion.
9. **COMPETENCE AND NEGLIGENCE**

Hire of Plant, Skips & Roll-On Roll-Off Receptacles Terms

- 9.1 For the avoidance of doubt, the reference to "a person competent in operating the Plant" at Condition 9 of Conditions is to a person who has appropriate qualifications, training and experience to operate the Plant. Whilst a careless act or omission on that person's part may indicate negligence it does not of itself constitute incompetence. Incompetence arises only if that person is not aware of the consequences of their behaviour.